77

Supreme Court, U.S.
FILED

07-784 DEC 4 - 2007

OFFICE OF THE CLERK

No. (1)

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT OLSON,

PETITIONER,

vs.

CONTINENTAL RESOURCES, INC., an Oklahoma Corporation; et al.

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION I

PETITION FOR WRIT OF CERTIORARI

Robert Olson, Pro Se
9022 E 60th St
Tulsa, Oklahoma 74145
918 252 1987

Questions for Review

1. Abuse of Discretion by trial court for not vacating a summary judgment procurred by fraud

2. Intrinsic fraud and/or extrinsic fraud (attorney ex parte communication with judge) is sufficient fraud to vacate the summary judgment.

3. The summary judgment process in Oklahoma violates the due process provision of the Fourteenth Amendment to the United States Constitution.

4. Fraud and commonplace, long time,improper, substantive *ex parte* communication between attorneys and trial court judges (*Ex parte* Case Summary Notebooks) has deprived Oklahoma citizens of fair trials for about 30 years, See Page 22 and Page 23 .

5. Fiduciary Duty of oil and gas operator to the override owner. (A.) Power and Control when the operator distributes revenue imposes fiduciary duty. (B.) New Important Question that should be settled by this Court: The override, assigned from base leases before production, vested by production, effective from first production, is a third party creditor beneficiary of the operating agreement through the participation agreements (which are subject to the net revenue) and is thus due fiduciary duty from the operator.

6. Plaintiff / Appellant was always due a jury trial.

List of Partics

ROBERT OLSON,

Plaintiff,Appellant,
Petitioner,

vs.

CONTINENTAL RESOURCES, INC.,
an Oklahoma Corporation;
HAROLD HAMM, an individual and
President and Chief Executive Officer
of Continental Resources, Inc.;
TOM LUTTRELL, an Individual and
Vice President
of Continental Resources, Inc.;
DAVIS OPERATING COMPANY,
an Oklahoma Corporation; and
WILLIAM H. DAVIS,
an Individual and President
of Davis Operating Company,

Defendants,Appellees,
Respondents.

TABLE OF CONTENTS

Questions for Review i

List of Parties ii

Table of Contents iii

Index of Appendices v

Table of Authorities xi

Table of Rules, etc. ixx

Opinions Below 1

Jurisdiction 2

List of Constitutional and Statutory Provisions Involved 3

Statement of the Case 5

Question 2. Intrinsic Fraud and Extrinsic Fraud in the Case 5

Question 1. Abuse of Discretion 16

Question 3. and 4.
Oklahoma summary
judgment policy, its
practice and effect 19

Plot of Oklahoma
Supreme Court Case
Load vs years 22

Plot of Percentage
increase of Case Load
and population vs years 23

Question 5.
Fiduciary Duty 24

Question 6.
Jury trial 28

Reasons for Granting
Petition for Certiorari 32

Conclusion and
Signature 35

List of Opposing
Counsel 36

INDEX OF APPENDICES

Appendix designation	Description of Appendix
Appendix A	Court of Civil Appeals, Div I Opinion, Case # 102,933, filed April 13, 2007
Appendix B	Trial court, Judge Linder Order of Dec 6, 2005
Appendix C	Court of Civil Appeals Rehearing denied
Appendix D	Oklahoma Supreme Court Certiorari denied
Appendix E	Judge Hansen refuses to Disqualify, March 9, 2007
Appendix F	Motion for Rehearing for Judge Hansen to Disqualify March 15, 2007
Appendix G	Court of Civil Appeals, Div III Opinion Case # 99704, filed February 17, 2004

Appendix designation	Description of Appendix
Appendix H	Appeal # 99704, Certiorari denied, April 5, 2004
Appendix I	Order denying Judge Franklin to Recuse
Appendix J	Writ of Mandamus Case # 101,682, Denied
Appendix K	Trial Court, Judge Franklin's Order, Case # CJ-2002-151
Appendix L	Motion for New Trial, Denied
Appendix M	Fourteenth Amendment to the United States Constitution, and 28 U.S.C.A. Section 455(a)
Appendix N	Oklahoma Statutes, Title 12, Sections 1031 through 1038
Appendix O	Exerpts from the Oklahoma Rules of Professional Conduct
Appendix P	Oklahoma Code of Judicial Conduct

Appendix designation	Description of Appendix
Appendix Q	Oklahoma District Court Rule 13
Appendix R	Oklahoma Supreme Court Rule 1.36
Appendix S	Oklahoma Statutes, Title 21, Section 461, 463
Appendix T	Oklahoma Statutes, Title 21 Section 1585, Forging process of court or title to property, etc.
Appendix U	Exerpt from 17B C.J.S. Contracts Section 620 Creditor Beneficiary of Contract
Appendix V	Affidavit of opposing counsel Description of ex parte Communication given to the trial court judge (Judge Franklin)
Appendix W	Transcript of trial court hearing on summary judgment.

Appendix designation	Description of Appendix
Appendix X	Transcript of asset hearing where Judge Franklin admits he no longer has the only copy of the ex parte communication.
Appendix Y	Transcript of Recusal Hearing for Judge Franklin, heard by Judge Linder.
Appendix Z	Assignment of Override to Robert Olson
Appendix AA	Division Order to Robert Olson from Davis Operating Company
Appendix BB	Oklahoma Corporation Commission Order for increased density well, Defendant claimed 11.9 BCF remaining
Appendix CC	Defendant Continental Resources releases "all right title interest"
Appendix DD	Robert Olson did attach evidentiary materials to his Responses to Defendants' Motions for Summary Judgment

Appendix designation	Description of Appendix
Appendix GG	Affidavit of Tom Luttrell
Appendix HH	Affidavit of Tom Luttrell, Temporarily ceased production on September 22, 1998.
Appendix II	Settlement Agreement between Continental Resources, Inc. and Davis Operating Company
Appendix KK	Exerpt from *Fellows v. Owens*, 62 P.2d 1215
Appendix LL	Copy entire case, *Sadberry v. Hope*, Oklahoma, 444 P.2d 175, 1968 OK 107
Appendix MM	Exerpt from *Cain v. Neumann*, 316 S.W.2d 915, Texas
Appendix NN	Exerpt from *Phillips Petroleum Co. v. Taylor*, U.S. Supreme Court, 116 F.2d 994, 313 U.S. 565
Appendix OO	Opposing counsel time and billing for the Notebook for the judge. See page OO-2

Appendix designation	Description of Appendix
Appendix PQ	Selected excerpts from the handbook Oklahoma Civil Procedure, Forms and Practice
Appendix QR	Some of the terms in the Matli oil and gas lease.

TABLE OF AUTHORITIES

Blackwell Oil & Gas, et al.. v. Whited,
1921 OK 8, 196 P. 688. 7

Cain v. Neumann, 316 S.W.2d 915. 9,33,34

Campbell v. Nako Corporation,
195 Kan. 66, 402 P.2d 77 (1965). 33

Cole v. Philadelphia Co.,
345 Pa. 315, 26 A.2d 920. 33

Eckroat v. Landrum,
235 P.2d 705, (Okla. 1951). 29

Fellows v. Owens,
1936 OK 722, 62 P.2d 1215. 16

Gray v. Holman,
909 P.2d 776 (Okla. 1995). 29

Godfrey v. McArthur,
186 Okl. 144, 96 P.2d 322. 6

I.C. Amcana Inc. v. J.R. Hood,
885 P.2d 597 (Okla. 1992). 29

Nardi v. Poinsatte,
46 F.2d 347, (1931 N.D. Indiana) 16, 17

Olson v. Briscoe,
10 P.3d 246 6

Olson v. Continental Resources, Inc.,
2005 Civ App 13, 109 P.3d 351 1

Oklahoma Civil Procedure,
Forms and Practice, Second
Edition; Release 5, 1/04,
Release 8, February 2007,
Matthew Bender & Co., Inc.,
Clyde Muchmore and
Harvey D. Ellis, Jr. 20

Patel v. OMH Medical
Center, Inc.,
1999 OK 33, 987 P.2d 1185 18

Petition of Dare, Okl. Crim. App.,
370 P.2d 846 (1962). 17

Phillips Petroleum Co. v. Taylor,
116 F.2d 994, 313 U.S. 565 ... 9, 33, 34

Sadberry v. Hope,
1968 OK 107, 444 P.2d 175 17

State of Oklahoma, Commissioners of Land Office of Said State v. Amoco Production Company,
Okl. 645 P.2d 468 6

Stewart v. Amerada Hess Corporation,
1979 OK 145, 604 P.2d 854 7

Union Oil Co. of California v. Board of Equalization of Beckham County,
1996 OK 40, 913 P.2d 1330 ..... 15, 16, 19

Vacuum Oil Co. v. Brett,
1931 OK 168, 300 P. 632 17

LIST OF RULES, ETC.

Rules of Professional conduct 11

Code of Judicial Conduct 12

Okla Stat, Title 21, Section 461 12

"Rule of Law" "Practice of Law"
Insider Law 13

Oklahoma District Court
Rule 13 .... 19, 21

Oklahoma Supreme Court
Rule 1.36 .... 19, 20

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **state courts:**

The opinion of the highest state court (Oklahoma Court of Civil Appeals, Div I) to review the merits appears at Appendix A to the petition and has been designated for publication

The opinion of the Oklahoma Court of Civil Appeals, Div III, appears at Appendix G to the petition and is reported at *Olson v. Continental Resources, Inc.*, 2005 CIV App 13, 109 P.3d 351.

JURISDICTION

[X] For cases from **state courts:**

The date on which the highest state court, the Oklahoma Court of Civil Appeals, Div I, decided my case was: April 13, 2007.
A copy of that decision appears at Appendix A .

A timely petition for rehearing in the Oklahoma Court of Civil Appeals was thereafter denied on the following date: May 18, 2007 , and a copy of the order denying rehearing appears at Appendix C .

A timely petition for certiorari in the Oklahoma Supreme Court was thereafter denied on the following date: September 11, 2007 , and a copy of the order denying certiorari appears at Appendix D . Case 102,933

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (a).

List of Constitutional and Statutory Provisions involved, Contained in the Appendix:

Appendix	Provision Involved
M	U.S.C.S. Constitutional Amendment Fourteen, Section 1. 28 U.S.C.A. Section 455(a) Judicial impartiality.
N	Title 12 Oklahoma Statutes, Section 1031, Vacation or Modification of Judgments, (1031(4)), and Section 1033 Procedure after 30 days Section 1038 Limitations.
O	Exerpts from the Oklahoma Rules of Professional Conduct.
P	Exerpts from the Oklahoma Code of Judicial Conduct.
Q	The Oklahoma District Court Rule 13.
R	The Oklahoma Supreme Court Rule 1.36.
S	Title 21 O.S. , Section 461, Larceny or Destruction of Records by Clerk or Officer.

Appendix	Provision Involved
S, cont.	Title 21, Section 463, Offering Forged or False Documents for Record.
T	Title 21, Section 1585, Forging process of Court or Title to Property.
U	Contract; Third Party Creditor Beneficiary.

Statement of the case. Frauds

Question 2. In 1984, Appellant was assigned an override on Section 17, T16N-R11W, Blaine County, Oklahoma. The override was assigned before production, effective on first production and vested by production. Appendix Z .The well seemed to develop a hole in the casing and temporarily ceased production on September 22, 1998. Appendix HH , page 3 . Davis Operating Company (DOC) obtained a farmout and moved in a workover rig on September 20, 1999, Appendix GG , page 5 and re-established production in paying quantities, from the same formation in the same borehole. DOC paid shut-in royalties before moving in and the mineral owners accepted royalty payments after DOC re-established production. Appendix G-4 . Continental Resources, Inc. (CRI) filed new leases on September 13, 1999. Appendix G , page 4 . CRI and DOC agreed to release the "Old Leases" and operate under the "New Leases", Appendix II and refused to pay Appellant's override. Appellant sued.

On August 11, 2003, a Summary Judgment in favor of Defendants (CRI and DOC) was filed in Blaine County District Court, Appendix K citing "probable" lease expiration and lease surrender (without vacation of premises). Appellant faced inadequate discovery, was not allowed oral argument and right to a jury trial was ignored. See

Transcript of summary judgment hearing, July 17, 2003, Appendix W . The first mention of and contention against the intrinsic fraud of "probable" lease expiration was Plaintiff's Response to Defendants Motions for Summary Judgment, Record pages 98 - 148, and pages 189 - 247, and exhibits pages 281 - 305. Filed June 27, 2003.

Record Page 190, page 2, 3 therein: *Olson v. Briscoe,* 10 P.3d 246 states: "the lease terminates only when the grantor has successfully brought an action to cause forfeiture of the lease". Also please see *State of Oklahoma ...Commissioners of Land Office of Said State v. Amoco Production Company,* Okl., 645 P.2d 468 held in *Godfrey v. McArthur,* 186 Okl. 144, 96 P.2d 322, 325 (1939):

> "After production is found in time to preserve the lease, the question with reference to its extension and operation over all the premises described therein is one of diligent and proper development according to the covenants contained in the lease; it is a question of forfeiture, not one of expiration."

So, the "Old Leases" have always been valid.

Concerning lease surrender: On page 4 of Plaintiff's Responses to Defendants' Motions for Summary Judgment, Record pages 101,192 :

"The facts indicate the "New Leases" were

false documents and thus forgeries, (Appendix T), at the time they were filed of record. These forged documents were used to prejudice Plaintiff's title to his override. The admitted agreement by Defendants, (Appendix II), to release the valid "Old Leases" in favor of the "New Leases" to extinguish Plaintiff's override is an action to obtain Plaintiff's override by false pretenses. It is a jury question, not subject to summary judgment."

and

"the two controlling points on carry forward of the override are: .

1. The subsequent lease was bought while the original lease was still in full force and effect, and
2. The mineral lease premises were never surrendered to the mineral owners.

Please see: *Stewart v. Amerada Hess Corporation,* 1979 OK 145, 604 P.2d 854 :

"Where oil and gas lease contains habendum clause providing that the lease is to remain in force after the primary term for as long thereafter as oil or gas is produced, under no circumstances will cessation of production in paying quantities ipso facto deprive the lessee of his extended-term estate."

And : *Blackwell Oil & Gas et al.. v. Whited,* 1921 OK 8, 196 P. 688 :

"To constitute abandonment in respect of an oil and gas lease there must be a concurrence of the intention to abandon and an actual relinquishment of the property, so that it may be appropriated by the next comer."

Defendants never vacated the premises so, any claim of lease surrender is not valid. The Opinion of the Court of Civil Appeals, Division III, Judge Hansen , on page 3, paragraph 4 therein, Record Page 1035, admits: "The royalty interest owners under the old leases accepted shut-in royalty payments and accepted royalties from subsequent gas production." By the provisions of the leases Appendix QR , the "Old Leases" were ratified. The "Old Leases were always in full force and effect. The surrender clause in the leases expects vacation of the surrendered premises to be able to reduce the rentals on an acreage basis. No vacation of premises means there was no effective surrender of the leases. It also means the release of lease by Continental Resources whereby they released "all right title interest" is a false document of title because they did not own Plaintiff's override, thus they could not release the override ownership.

Fiduciary Duty was brought before the trial court in Plaintiff's Response of June 27, 2003 discussed above in Record pages 137 - 141, pg 33 - 37 therein

and Record pages 240 - 246, 29- 29c therein, Appendix EE .

Plaintiff / Appellant's right to a jury trial was brought before the trial in Plaintiff's Responses of June 27, 2003 discussed above in Record pg 141, pg 38 therein, and Record page 246, pg 30 therein. Appendix FF .

Since Oklahoma Supreme Court Rule 1.36 basically does not allow briefing to the Supreme Court on Summary Judgment cases, this information is considered presented to the Appellate Court as is. All these issues, No expiration, no valid surrender, fraud, filing and asserting invalid top leases, forgery, and the word "probable" in a summary judgment were brought up to the Appellate Court in the Petition in Error # 99704, filed on August 27, 2003. The Opinion was affirmed against Appellant (Appendix G) citing: (1.) No attached evidentiary materials whatsoever, (false) Appendix DD , (2.) "probable" lease expiration and (3.) lease surrender (citing primary lease term case law in a secondary lease term situation, and comparing Plaintiff's override assignment from base leases to an override assignment on a sublease). Certiorari was denied. Appendix H . Surrender is not effective without vacating premises. *Cain v. Neumann*, 316 S.W.2d

915 Appendix MM . Also please see *Phillips Petroleum Co. v. Taylor,* 116 F.2d 994, 313 U.S. 565. Appendix NN .

On August 27, 2003, Appellees' application for attorney fees contained an entry for 2.5 hours preparing and highlighting a notebook for the judge. I know that I, as Plaintiff / Appellant had not seen a copy of that notebook. At the asset hearing on June 17, 2004; I, as Plaintiff, asked for a copy of the notebook. Judge Franklin looked down to the left, out the door, and admitted he didn't have it anymore. Appendix X pg 7 . This is the first actual proof of the substantive *ex parte* communication between the opposing counsel and the judge. I refiled the case as CJ-2004-121 to beat the statute of limitations on the refile. I also asked for Judge Franklin's recusal, filed November 18, 2004.

The above information plus the subsequent investigation and filings brought out the following information on the legal activities by the Officers of the Court:

The Defendants: CRI filed false documents of title, (the releases) Record pg 1513, 1536, Appendix CC CRI did not own "all right title interest" in the oil and gas leases.

Defendants' counsel: (1.) Made misleading statements of law and fact to the court, Record pg 1521,1527, 1529, 1532 !, 1538, 1561; This violates the Rules of Professional Conduct Rule 3.3(a)(1). (2.) Limited discovery by delaying answer.

Extrinsic Fraud:

(3.) Prepared the clandestine, substantive *ex parte* Case Summary Notebook, indexed to their briefs and highlighted to the language in their briefs, hand delivered to Judge Franklin. Affidavit of Julia C. Rieman, opposing counsel, Appendix V , Record Pages 1577, 1578. This violates the Rules of Professional Conduct Rules 3.5(a), 3.5(b) and 3.5(b)(2), Appendix O . (4.) Did not file a copy of the Notebook of record. (5.) *Ex parte* Notebooks prepared "as a matter of course". Judge Linder Transcript, Record page 1725 (page 46, Ln 24, 25 and page 46 Ln 1 therein) Appendix Y-17 (6.) The Notebook was legal assistance to Judge Franklin. This violates Rules 8.4(a), 8.4(c), and 8.4(f). Record page 1547 Appendix O-5 (7.) No notice or copy of the Notebook given to the

Plaintiff / Appellant. Record page 1548, Judge Bell's Opinion, Oklahoma Court of Civil Appeals, Div I, Case No. 102933, filed April 13, 2007, page 7 therein. Appendix A .
Judge Franklin: (1.) Received and accepted the Notebook. Record pages 1577, 1578. Appendix . This is a violation of the Code of Judicial Conduct, Canon 3B(6) (2.) thereby accepted legal assistance from opposing counsel. Record pages 1577, 1578, Appendix V . This is a violation of the Code of Judicial Conduct Canon 3B(6)(a) and Canon 3B(6)(b). (3.) Judge Franklin did not file the Notebook of record. (4) Judge Franklin did not order a copy be delivered to the Plaintiff. These actions a violation of Canon 3B(6)(b) of the Code of Judicial Conduct. Appendix P . (5.) Judge Franklin threw the Notebook away, thereby destroying a court document and thus destroyed evidence. Record page 1543, 1544, and in Judge Franklin Transcript on June 17, 2004, pg 6 therein. Appendix X-7 . This action is a violation of O.S. Title 21 Section 461.

The trial Judge pronounced summary judgment 6 days after receiving the substantive, *ex parte*, Cliff's Notes style Case Summary Notebook and 11 days before the Defendants' proposed finding of facts and conclusions of law was filed on July 28, 2003. Record page 1728, Docket sheet 4, pg 1731.
Court of Civil Appeals Judge Hansen: In the Opinion in Case No. # 99704, Appendix G , Judge

Hansen made false statements of fact in the Opinion. Record pages 1603, 1604, 1605, 1606, 1037; Appendix G . (2.) Misapplied primary lease term case law in a secondary lease term situation This is a violation of Code of Judicial Conduct Canon 3B(1) Record pages 1038 - 1041, Appendix P-1 Also in Appellant's Brief in Chief in Appeal # 102933, Exhibit "C" .; Certiorari was denied in Case #99704, Appendix H .

Judge Ray Dean Linder: Judge Linder was the presiding judge for the January 13, 2005 Hearing for the recusal of Judge Franklin. (1.) Judge Linder appointed Judge Franklin to be chief judge, so Judge Linder cannot be considered an impartial judge. Linder January 13, 2005 Transcript. Record pg 1725, page 23, Ln 2-9 therein. Appendix Y-8 . Judge Linder stated he has received hundreds of the Case Summary Notebooks over his 37 years of being a Judge. Linder Transcript, page 1725, pg 30-34, 50 therein. (2.) Judge Linder admits from the bench that accepting the Cliff's Notes style Case Summary Notebooks "makes it a little easier to collect your thoughts when you get ready to draft your order". Linder Transcript, page 33 therein. Appendix Y-14 (3.) Judge Linder makes a distinction between the "Rule of Law and the "Practice of law" : That is Insider Law, hidden from the public, and is just as much a fraud on the public as insider trading on the stock market. Record pg 1725, pg 49-52 therein. Appendix Y18 - Y21. Judge Linder admonished the

pro se Plaintiff / Appellant that the hearing was a court of law and everyone is expected to know and abide by the rules. Appendix Y-5 . Judge Linder is also saying the professional "Officers of the Court" don't really have to abide by the rules. Appendix Y-19 to Y-21 .

Court of Civil Appeals Judge Bell: (1.) Judge Bell made a false statement of fact in his Opinion. Judge Bell's Opinion stated: "Plaintiff's pleadings were based on alleged inappropriate ex parte communications between opposing counsel and Judge Franklin, about which Plaintiff knew during the original trial proceedings.". HOW COULD THE PLAINTIFF KNOW ABOUT THE EX PARTE COMMUNICATION WHEN THE CASE SUMMARY NOTEBOOK WAS NOT MADE UNTIL 6 DAYS BEFORE THE HEARING AND ONLY ONE COPY WAS HANDED TO THE JUDGE EX PARTE? Record, Judge Bell's Opinion Case # 102933, filed April 13, 2007, page 3 pgrf 4 therein, Appendix A

(2.) Judge Bell acknowledged the fraud on page 7, pgrf 11 of his Opinion on Case # 102933.

(3.) Judge Bell rendered a quick Opinion to sidestep a full stand up hearing on Judge Hansen's disqualification, (her previous Opinion (# 99704) would not stand up to an open hearing.) and to render moot Appellant's request for Judge Hansen's disqualification. Disqualification was denied in a footnote. Appendix A .

The Oklahoma Supreme Court has said in *Union Oil Co. of California v. Board of Equalization of Beckham County,* 1996 OK 40, Pgrf 10, 913 P.2d 1330, *1338, that the principle of issue preclusion may not be invoked when the party against whom the earlier decision is interposed did not have a "full and fair opportunity" to litigate that issue in the previous case.

In this case the fraud has been admitted to in an affidavit. So, both the grounds invoked by Judge Bell in his Court of Civil Appeals, Division I, Opinion in Case No. 102,933, filed April 13, 2007, are without merit.

Fraud makes all previous judicial decisions based on issue preclusion as subject to vacation.

There are enough irregularities perpetrated by the Professional Officers of the Court herein as to call for an exercise of the supervisory power of the United States Supreme Court.

Abuse of Discretion.

Question 1. The Court of Civil Appeals, Division II, Judge Jane Wiseman, in summary affirmation of the trial court's (Judge Franklin) denial of Plaintiff's Motion for New Trial in Blaine County District Court Case CJ-2004-121 (the timely refile of Blaine County District Court Case CJ-2002-151 under O.S. Title 12, Section 100), stated in a footnote: "The main purpose of summary judgment is to avoid useless trials and at the same time achieve a final determination on the merits." *Union Oil Co. of California v. Board of Equalization of Beckham County,* 1996 OK 40, Pgrf 10, 913 P.2d 1330 1333.

I, Plaintiff / Appellant, Robert Olson, contend that a fair trial is never a useless trial. Plaintiff in this case never had a full and fair opportunity to litigate my side of the case.

Fellows v. Owens, 1936 OK 722, 62 P.2d 1215, defines *ex parte* legal assistance to the judge as fraud. In the instant case, opposing counsel have admitted by affidavit (Appendix V) and Transcript, (Appendix Y-17)that they did supply *ex parte* legal assistance to the trial court Judge Franklin. Record page 1587 ,Appendix OO-2 .

Fraud practiced by the successful party and participated in by the trial court Judge destroys the jurisdiction of that court and taints every subsequent supporting court decision. *Nardi v.*

Poinsatte, 46 F.2d 347, (1931 N.D. Indiana) and *Petition of Dare,* Okla. Crim. App., 370 P.2d 846 (1962).

Sadberry v. Hope, 1968 OK 107, 444 P.2d 175 says: "A judgment which on appeal, has been affirmed and has become final, may upon substantial compliance with statutory requirements, be vacated or modified for fraud, practiced by the successful party in obtaining the judgment. 12 O.S. 1961 Section 1031(4)." Appendix N-1 and Appendix N-all . The statutory requirements have been satisfied. "The standard for vacating a judgment for fraud is judicial discretion; which should be rendered to promote the ends of justice."

From *Vacuum Oil Co. v. Brett,* 1931 OK 168, 300 P. 632, 150 Okla. 153: "Trial court's discretion on petition to vacate judgment should always be exercised to promote the ends of justice; much stronger showing of abuse of discretion must be made where judgment has been set aside than where application to vacate judgment has been refused (Comp. St. 1921, Section 810)."

Both trial court Judges, Judge Franklin and Judge Ray Dean Linder have refused to vacate the Court of Civil Appeals, Division III, Opinion in Case # 99704, filed on February 17, 2004 and have refused to vacate the Summary Judgment Order from Judge Franklin, filed August 11, 2003; for fraud practiced by the successful party even though

intrinsic fraud was extensively discussed in Plaintiff's Responses to Defendants' Motions for Summary Judgment; and the extrinsic fraud was admitted to by affidavit.

Whether the fraud admitted to above (Julia C. Rieman Affidavit, Appendix V) is actionable, actual fraud or constructive fraud is irrelevant, the legal consequences are the same. *Patel v. OMH Medical Center, Inc.,* 1999 OK 33, 987 P.2d 1185.

For Judge Linder to not recognize the fraud and then to refuse to vacate the Judgment of August 11, 2003 is an abuse of discretion; and that does not promote the ends of justice.

Oklahoma summary judgment process

Questions 3 and 4.

Oklahoma District Court Rule 13 (Appendix Q) violates the due process of law provisions of the Fourteenth Amendment of the United States Constitution. When the Oklahoma Supreme Court, in *Union Oil Co. of California v. Board of Equalization of Beckham County,* 1996 OK 40, 913 P.2d 1330, says that: "Main purpose of summary judgment is to avoid useless trials and at the same time achieve final determination on merits." ; the Court is really saying case load reduction is more important than justice. (Which item came first in the sentence structure?!) A fair trial is never a useless trial.

District Court Rule 13b allows the party opposing the motion for summary judgment only 15 days to respond to the motion; (or 45 days after service of first summons). To appeal an adverse summary judgment, the appellate Court restricts the itself (and thus the appellant) to only considering the materials presented to the trial court and will not accept a brief in support of the appeal. Oklahoma Supreme Court Rule 1.36. Appendix R .

So, the party opposing the motion for summary judgment has either 45 days to answer the suit and respond to the motion for summary judgment and prepare for an appeal or 15 days to respond to the Motion for summary judgment and prepare for an

appeal. *Oklahoma Civil Procedure, Forms and Practice,* Second Edition, Release 5, 1/04, Release 8, February 2007, Matthew Bender & Co. Inc., a member of the LexisNexis Group, Clyde Muchmore and Harvey D. Ellis, Jr. (Ok Civ. Prac.). Exerpts Appendix PQ .

Either circumstance is an unreasonably short time to adequately defend oneself, especially when opposing counsel delays providing discovery. The limitation of the parties to the same legal arguments and indeed to the same briefs presented to the district court, is new to Oklahoma. With no oral argument (Appendix W), restricted discovery and the fraudulent, symbiotic alliance between attorneys and the judge (The clandestine, *ex parte,* expected Case Summary Notebook given to the judge to assist him in making his decision (Appendix V)), means there is a distinct probability that the arguments of the party opposing the motion for summary judgment are not heard at the trial court level.

Then when the appellate court will not accept briefs under Oklahoma Supreme Court Rule 1.36(g), the party opposing the motion for summary judgment has no opportunity to refute the eroneous legal conclusions of the trial court. This means there is a distinct probability that the arguments of the party opposing the motion for summary judgment are never heard.

In the Judge Linder Transcript of the hearing

held on January 13, 2005, Judge Linder testifies from the bench that he has been a judge for 37 years (page 50) and has received hundreds (page 50) of the Case Summary Notebooks, and that the practice is very commonplace.

By plotting Oklahoma Supreme Court case numbers against years, I, the Appellant, have shown there has been a dramatic increase in the Oklahoma Supreme Court case load since the District Court Rule 13 was adopted in 1982, Rev 1984. The Plot (Page 22) shows the increase is not a function of population growth. Analysis of the plot (Page 23) on a percentage growth basis shows that before District Court Rule 13, the case load followed population growth from 1960 to 1980. After District Court Rule 13, Oklahoma Supreme Court case load blossomed. Please see the tabulation below:

District Court Rule 13	Years	Population Percent Increase	Case Load Percent Increase
Before	1960-1970	9.90%	10.2%
Before	1970-1980	18.20%	18.6%
After	1980-1990	3.97%	35.3%
After	1990-2000	9.69%	32.6%

This shows that the public's reaction to the unjust "Rule 13" summary judgment policy of the Oklahoma Supreme Court is the filing of more appeals. The policy has backfired and has caused significant injustice to the public.

Fiduciary Duty.

Question 5.

A. Power and control impose Fiduciary Duty.

B. Contract to impose Fiduciary Duty.

I would like to discuss the entities and relationships that are common in almost all oil and gas deals. First I will designate the key entities; other identifications mostly are subheadings under the main designated entities:

M = the mineral owner or royalty owner.

P = the promoter, the one who supplies the prospect area.

G = the geologist (who generated the prospect idea), or other override owner.

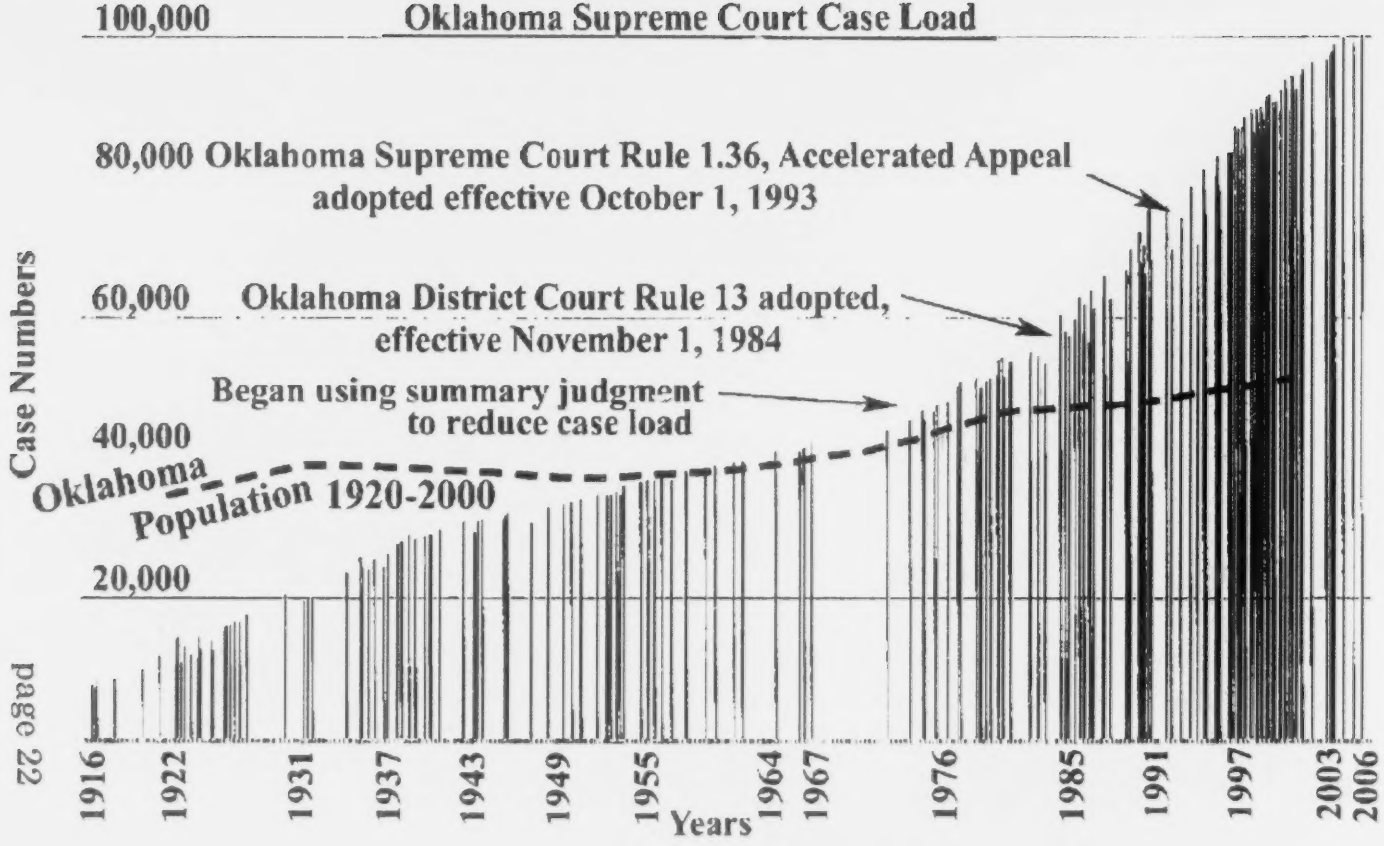
INV = the individual investor, the one who supplies the money to drill the well.

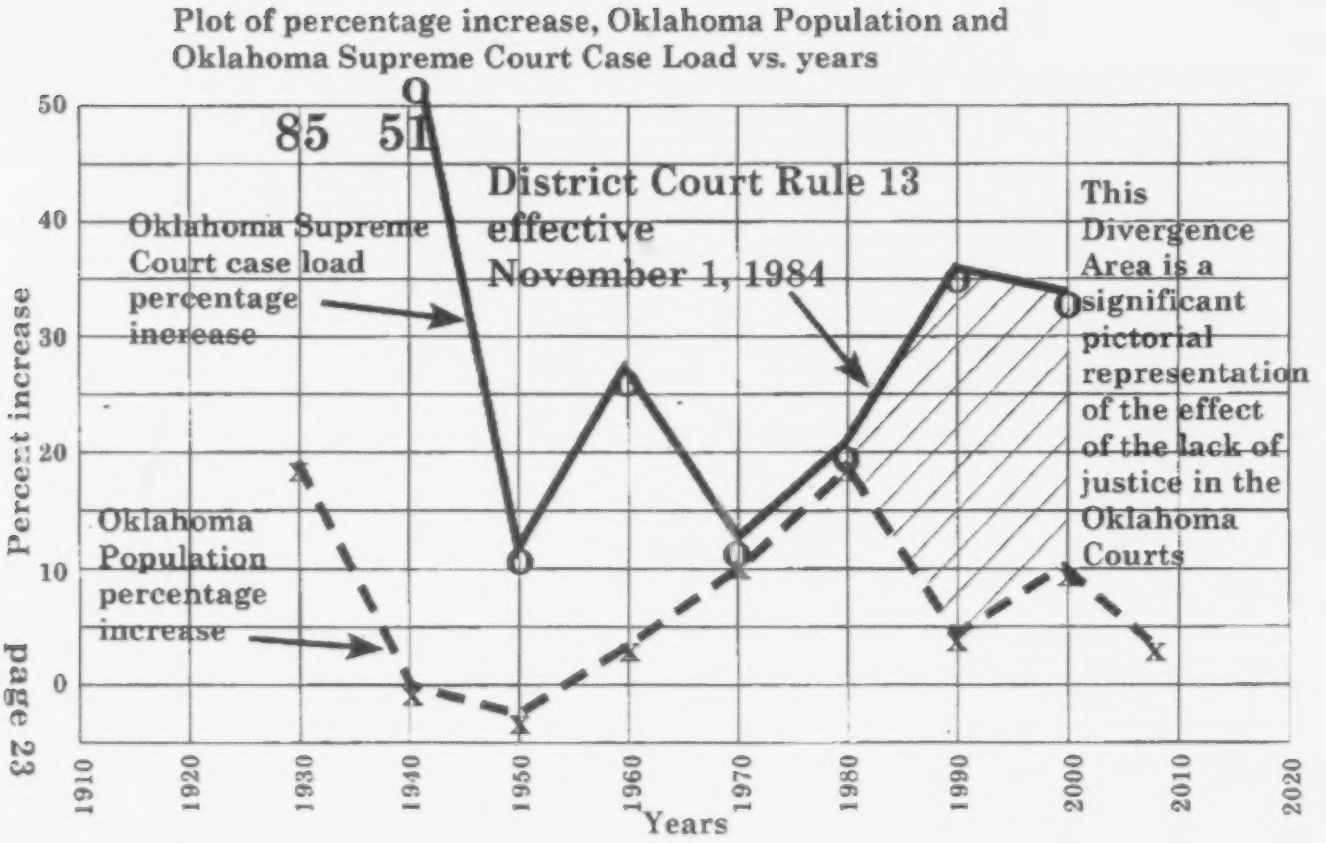
OP = the operator, the one who manages the drilling of the well, and if successful, manages the ongoing business operations of the well, its production, and manages the ongoing project. (and in Oklahoma, often distributes proceeds).

Other identifications are:

RY = the royalty owner's share of the production proceeds.

ORRI = the override owner's share of production proceeds.


100,000
Oklahoma Supreme Court Case Load
80,000 Oklahoma Supreme Court Rule 1.36, Accelerated Appeal adopted effective October 1, 1993
60,000 Oklahoma District Court Rule 13 adopted, effective November 1, 1984
Began using summary judgment to reduce case load
40,000
Oklahoma Population 1920-2000
20,000
Case Numbers
1916
1922
1931
1937
1943
1949
1955
1964
1967
1976
1985
1991
1997
2003
2006
Years


Plot of percentage increase, Oklahoma Population and
Oklahoma Supreme Court Case Load vs. years
85 51
District Court Rule 13
effective
November 1, 1984
Oklahoma Supreme
Court case load
percentage
increase
Oklahoma
Population
percentage
increase
This
Divergence
Area is a
significant
pictorial
representation
of the effect
of the lack of
justice in the
Oklahoma
Courts
Percent increase
50
40
30
20
10
0
1910
1920
1930
1940
1950
1960
1970
1980
1990
2000
2010
2020
Years

PWI = the promoter's working interest (share of costs and proceeds after the net revenue).
IWI = the individual investor's working interest (share of costs and proceeds after net revenue).
PRI = the promoter's net revenue interest, { = (1-RY-ORRI) x (PWI)}.
IRI = the individual investor's net revenue interest, { = (1-RY-ORRI) x (IWI)}.
One person may belong to two or more of all the designations above.

The major players are the mineral owners (M), the promoter (P), the override owner (G), the investors (INV), and the operator (OP). There are four major contracts that govern the activity. they are:

1.) The oil and gas lease, between the mineral owner (M) and the promoter (P).
2.) The override agreement (often part of the employment contract), between the "geologist" (G) and the promoter (P).
3,) The participation agreement, between the promoter (P) and the investors (INV).
4.) The operating agreement, between the investors (INV) and the operator (OP), with the promoter often being the agent, or negotiator for the investors, or even being the same person as the operator. Even so, the participation agreement and the operating agreement are two different contracts. However---

In the oil and gas lease, (P) leases the rights to explore for oil and gas, and if successful, promises to share a percent of the proceeds (RY) with (M) free of cost. In the override agreement, for generating the prospect idea, (P) promises to share a small part of the prospect proceeds (ORRI) with (G), free of cost. In the participation agreement, the investors (INV), agree to pay all costs for a reduced share in the proceeds from the prospect. The investors (INV) hire the operator to manage the fulfillment of the covenants of the participation agreement. The operator receives an overhead charge as his compensation for management services.

Under the participation agreement, the investors agree to pay all the costs of drilling and completion and operating the prospect property. The investors make this agreement subject to the royalty and override lease burdens. The investors know the participation agreement benefits the royalty and override owners and accept that condition as one of the responsibilities of the participation agreement contract.

When the investors contract for an operator, they contract for an entity to carry out the covenants of the participation agreement. One of these covenants is to pay the override owner. The override owner is a direct third party beneficiary of the

participation agreement contract and is thus is a third party creditor beneficiary of the operating agreement.

By being a third party creditor beneficiary of the operating agreement, the override owner, assigned from the base leases, vested by production and effective from first production, is due the same fiduciary fealty that the working interest owners are due.

The Defendants in this case CJ-2002-151 have not shown the Plaintiff, Robert Olson, this fiduciary fealty.

If the United States Supreme Court recognizes this fiduciary duty, most of the attempted washout and extinguishment of the geologists' overrides would cease.

Jury Trial.

Question 6.

The first reference to Plaintiff / Appellant's right to a jury trial is in Plaintiff / Appellant's Response to Defendants' Davis Operating Company and William H. Davis' Motion for Summary Judgment in Blaine County, Oklahoma, District Court Case No. CJ-2002-151, filed on June 27, 2003. (Oklahoma state Appeal # 102933, Record pages 520-606; exerpts Record pages 571-572; Motion pages 44 and 45, pgrfs 62 and 63, therein.) Appendix FF

And Plaintiff / Appellant's Response to Defendants, Continental Resources, Inc., Harold Hamm and Tom Luttrell's, Motion for Summary Judgment in Blaine County, Oklahoma, District Court Case No. CJ-2002-151, filed on June 27, 2003. (Oklahoma state Appeal # 102933, Record pages 608-725; Exerpts Record pages 664-665, Motion pages 30 and 31, therein.) Appendix FF Trial Court only addressed (and discounted) conspiracy to defraud (pgrf 18) and Sham Legal Process. All other jury trial issues were ignored by the trial court. Transcript of the Summary Judgment hearing, Appendix W

Plaintiff was not allowed oral argument.

The jury trial issue was brought up again in the Petition in Error, Oklahoma state Appeal # 99704, filed August 27, 2003, Exhibit "C" therein, pages 1 and 2:

"Summary adjudication process is method for identifying and isolating nontriable fact issues, not device for defeating opponent's right to a trial by jury. In *Gray v. Holman,* 909 P.2d 776 (Okla.1995)."

Also under ISSUES, 2. (f., g., h.)

"f.) Quiet title of the override is an action to recover possession of real property and is in the nature of common-law ejectment action and is triable to a jury. Title 12 O.S. 1941 Section 556 (Okla. St. Ann.). In: *Eckroat v. Landrum,* 235 P.2d 705 (Okla. 1951). Title 12 O.S. 1981 Section 556; Article 2, Section 19, Oklahoma Constitution."

"g.) Bench trial judgment denied right to jury trial on nonequitable issues, was reversed. *I. C. Amcana Inc. v. J. R. Hood,* 855 P.2d 597 (Okla. 1992)."

" In this case: Jury Trial Issues :

Sham Legal Process
Conspiracy
Intent of Defendants."

"h.) A renewal and extension clause is not necessary where the operator does not surrender the premises -- Same as working interest owners."

Williams & Meyers [Record tab 25]; page 325 therein, Section 418.1 ::: The override is interest in land, vested estate, Ln 7.

Williams & Meyers [Record tab 25]; page 366.4 therein, Section 420.2, Lines 8-11 (FN 6, FN 7).

Williams & Meyers [Record tab 25]; page 366.6 therein, Section 420.2, Ln 2-5.

Within this case:

"Since other override owners (assigned after production was established) dealt down their ownership under threat of total extinction through assertion of the new leases, the only reason to release the old leases was to wash out Plaintiff's override."

Defendants Intent is a jury trial issue.

Paragraph 6, Issues:

"a.) New Leases are false documents of title.

b.) Thus the new leases are forgeries, even if genuine.

c.) Filing forged (false) documents of title.

d.) Asserting the false documents of title (new leases) are the only true documents of title (filing suit CJ-99-123)

e.) Settlement agreement terms (to release the valid old leases and operate under the new leases).

f.) Conspiracy (They have admitted the agreement).

g.) Sham Legal Process

1. New leases genuine but false documents of title; Thus they are forgeries.
2. Forgeries cannot be lawfully issued.
3. Filing of the forged documents (new leases) is issuance.
4. Asserting authority (Filing Case CJ-99-123).
5. Asserting authority over property (releasing old leases and extinguishing Mr. Olson's override)."

"i.) This meets the definition of sham legal process: (Detective Schultes, Fraud and Forgery Division, Tulsa Police Department)."

Appeal Requested Relief:

"The Appellant requests the Summary Judgment Order be reversed with directions to quiet title of the override to Mr. Olson and to remand for jury consideration of the questions of damages, intent, sham legal process and conspiracy."

The Oklahoma Court of Civil Appeals, Division III, Opinion of February 17, 2004, rejected the jury trial issue of sham legal process, page 9, paragraph 16, Record page 1041, Appendix G and rejected the jury trial issue of conspiracy on page 10, paragraph 17, Record page 1042, Appendix G .
All other jury trial issues were ignored.

Reasons for Granting the Petition for Certiorari

(a) The actions of the "Professional Officers of the Court" have acted in a manner that does not follow the Rules of Professional Conduct for the attorneys and does not follow the Code of Judicial Conduct for the Judges (the trial court judge violated the Canons, the appellate judges were willing to overlook the violations). The Oklahoma legal system has been operating with these violations and special *ex parte* access to the judge for over 30 years. So, the present sitting judges (including appellate judges) see no harm in providing *ex parte* special access to the judge. "It just makes it easier to collect your thoughts when you sit down to write your order."

This is a fraud on the public and in this case that behavior is a fraud on the Plaintiff in that it deprives the Plaintiff of a fair trial because he had no opportunity to respond to the *ex parte* special access enjoyed by the opposing counsel. This type of behavior calls for the exercise of the supervisory powers of the United States Supreme Court.

(b) The trial court took Plaintiff's override property, valued by the Defendants at about $ 937,125.00, and awarding that property to the Defendants by way of fraud [fake surrender of lease without vacating premises] practiced by the successful

parties with the cooperation of the trial court judge. Subsequent decisions of Oklahoma appeal courts have supported the trial court in the fraud. To uphold the decisions by the Oklahoma appeal courts herein would produce a decision that would conflict with the decisions rendered in Pennsylvania (*Cole v. Philadelphia Co.,* 345 Pa. 315, 26 A.2d 920 [Fake surrender of lease][go to 26 A.2d because the Westlaw copy has two significant typos]), Kansas, (*Campbell v. Nako Corporation,* 195 Kan. 66, 402 P.2d 771 (1965) [Old Lease - New Lease fraud]), Texas (*Cain v. Neumann,* 316 S.W.2d 915 [Fake surrender of lease]) and the U.S. Supreme Court decision (*Phillips Petroleum Co. v. Taylor,* 115 F.2d 726 (C.C.A. 5(Tex) 1940), implied covenants against loss by drainage, refusal to capture or surrender), 116 F.2d 994, 313 U.S. 565, 61 S.Ct. 941.

This "Old Lease - New Lease" fraud is so old it is new again. Many of the people getting into the oil business now are financially oriented people and do not respect the override owner's rights.

(c) The United States Supreme Court should recognize the position and title status of the override interest, assigned before production is established, effective from first production, vested by production, is a third party beneficiary of the participation agreement (which is subject to the lease burdens; of which the override is one). The operating agreement is the agreement whereby the

participants designate the operator (commonly one of their own) to fulfill the obligations of the participation agreement. One of those obligations is to pay, or cause to be paid, the override interest owner his share of the proceeds. Thus this override interest owner is a third party creditor beneficiary of the operating agreement and is thus due fiduciary duty from the operator. This would be newly recognized in the oil and gas industry.

Fiduciary duty makes all the court decisions in this case (# 102,933, and # 99704) invalid.

Fiduciary duty was claimed by the Plaintiff in his Response to Summary Judgment in Blaine County District Court Case CJ-2002-151.

If the United States Supreme Court would recognize this fiduciary duty, most of the attempted washouts and extinguishments of the geologists' overrides would cease.

(d) Motive The assignment of the override did not have an extension and renewal clause. Defendants seemed to think they could use the primary term lease surrender clause in an established production situation to wash out the Plaintiff's override worth approximately $937, 125.00. An extension and renewal clause is not necessary when the original base leases are in full force and effect by continuing production, Appendix QR , at the time the new leases were bought.

The old prohibition against the "washout" fraud (1958, *Cain v. Neumann, supra,* and 1941, *Phillips Petroleum Co. v. Taylor, supra,*) needs a modern reinforcement.

CONCLUSION

Petitioner has shown the existence of fraud by opposing counsel and significant irregularities by judicial officials so as to warrant reversal of state appellate judicial decisions and Opinions, as well as vacation of the trial court summary judgment Order.

For the reasons and discussion within this Petition for Writ of Certiorari, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Dr. Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145
918 252 1987

Date: December 6, 2007

List of opposing counsel

Glenn A. Devoll
Julia C. Rieman
of
Gungoll, Jackson, Collins, Box & Devoll, P.C.
P.O. Box 1549
Enid, Oklahoma 73702
580 234 0436

Attorneys for Defendants / Respondents:
Continental Resources, Inc.,
Harold Hamm,
Tom Luttrell.

Robert B. Sartin
Barrow & Grimm, P.C.
610 South Main, Suite 300
Tulsa, Oklahoma 74119 - 1248

Attorneys for Defendants / Respondents:
Davis Operating Company,
William H. Davis

Robert Olson

APPENDIX

APPENDIX A

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS
OF THE STATE OF OKLAHOMA
DIVISION I

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
APR 13 2007
MICHAEL S. RICHIE
CLERK

Case Number
102,933

ROBERT OLSON,
Plaintiff,Appellant,

vs.

CONTINENTAL RESOURCES, INC., an Oklahoma Corporation; HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an Individual and Vice President of Continental Resources, Inc.; DAVIS OPERATING COMPANY, an Oklahoma Corporation; and WILLIAM H. DAVIS, an Individual and President of Davis Operating Company,
Defendants/Appellees,

APPEAL FROM THE DISTRICT COURT OF
BLAINE COUNTY, OKLAHOMA

HONORABLE RAY DEAN LINDER, JUDGE

AFFIRMED

Robert Olson, *Pro Se* Plaintiff / Appellant,
(1)

Glenn A. Devoll,
Julia C. Rieman,
GUNGOLL, JACKSON, COLLINS, BOX &
DEVOLL, P.C.,
Enid, Oklahoma,
For Defendants / Appellees, Continental
Resources, Inc., Harold Hamm and
Tom Luttrell,

Robert B. Sartin,
Adam K. Marshall,
BARROW & GRIMM, P.C.
Tulsa, Oklahoma,
For Defendants / Appellees, Davis Operating
Company and William H. Davis.

OPINION BY ROBERT DICK BELL, JUDGE:

1. Robert Olson, Plaintiff / Appellant, appeals from the trial court's order denying his petition to vacate a prior judgment on the ground of fraud. For the reasons set forth below, we affirm the order of the trial court.

2. In Blaine County District Court Case No. CJ-2002-151, Plaintiff sued Defendants / Appellees to quiet title to an overriding royalty interest in an oil and gas lease and to recover damages for "sham legal process" and "civil conspiracy". The trial court granted summary judgment to Defendants, and granted Davis Operating Company summary judgment on its counterclaim for overpayment of royalty payments. The judgment was affirmed by this Court in *Olson v. Continental Resources, Inc.*, 2005 OK CIV APP 13, 109 P.3d 351. The Oklahoma Supreme Court denied Plaintiff's petition for certiorari.

3. Plaintiff then sued the same defendants - asserting the same claims based on (2) the same facts - in Blaine County District Court Case No. CJ-2004-121. The trial court granted summary judgment to Defendants on the ground of claim preclusion. Plaintiff's appeal of that decision is pending in Supreme Court Case No. 102,398.

4. In October, 2004, Plaintiff filed a motion to vacate the judgment in Case No. CJ-2002-151 and a petition for a new trial in Case CJ-2004-121.

Plaintiff also sought recusal of Judge Ronald G. Franklin, the original trial judge. Plaintiff's pleadings were based on alleged inappropriate *ex parte* communications between opposing counsel and Judge Franklin, about which Plaintiff knew during the original trial proceedings. Judge Franklin declined to recuse himself. The Honorable Ray Dean Linder, presiding judge of the judicial administrative district, denied Plaintiff's recusal motion, finding (1) The telephone conversations between opposing counsel and the trial judge related to the scheduling of motions and hearings, and Plaintiff presented no evidence of any improper communications; and (2) the notebook prepared by opposing counsel and submitted as an aid to the court was not inappropriately given, as it merely contained copies of cases cited in the parties' summary judgment briefs. Judge Linder noted it is common practice for attorneys to supply trial judges with copies of opinions relied upon by litigants.

5. Plaintiff then sought extraordinary relief from the Oklahoma Supreme Court, which assumed original jurisdiction and denied Plaintiff's petition to have Judge (3) Franklin removed from the case. *Olson v. Franklin,* Case No. 101682 (Okla. Feb. 28, 2005) (unpublished), *reh'g denied.* Plaintiff's similar petition for a writ of mandamus to the United States Supreme Court was also denied. *In re Olson,*___ *U.S.*___ , 126 S.Ct. 1793, 164 L.Ed.2d

559, *reh'g denied*___ U.S.___ , 126 S.Ct. 2962, 165 L.Ed.2d 979 (2006).

6. By order dated June 16, 2005, the trial court denied Plaintiff's motion to vacate the judgment in case No. CJ-2002-151 and petition for a new trial in Case No. CJ-2004-121. The trial court noted Plaintiff's request for a writ of mandamus from the Oklahoma Supreme Court was based on the same facts and evidence asserted by Plaintiff in his motion to vacate and petition for a new trial. As a result of the Supreme Court's denial of mandamus relief and this Court's opinion in *Olson,* 2005 OK CIV App 13, 109 P.3d 351, the trial court held the issues raised by Plaintiff's motion and petition were moot.[1]

7. On August 11, 2005, Plaintiff filed the instant petition to vacate the judgment in Case CJ-2002-151, asserting the same argument he made in his earlier motion to vacate, his petition for a new trial in Case No. CJ-2004-121 and his

---

[1] The Supreme Court recently declared that the summary denial of a writ of mandamus, even after the Court has assumed jurisdiction, has no preclusive effect. *Miller Dollarhide, P.C., v. Tal*, 2006 OK 27, Pgrf 13, _____ P.3d _____. The doctrines of res judicata and law of the case do not apply to an appellate order summarily denying a writ of mandamus. *Id.* at Pgrf 15.

mandamus actions. (Plaintiff also made the same allegations in a "Motion to Vacate" filed one week later in the same court). Specificately, Plaintiff contended the notebook given to Judge Franklin by opposing counsel was a "substantive, clandestine ex parte communication" that amounted to a fraud being perpetrated upon him. The trial court denied the petition / motion, holding, *inter alia:*

> The Court finds that plaintiff failed to timely urge his prayer for relief on the grounds of fraud and further that a complete review of the file fails to show the existence of any fraud in the obtaining of the judgment rendered by Judge Franklin.[2]

From said judgment, Plaintiff appeals.

8. We hold the trial court's judgment may be affirmed on either of two independent grounds: Issue preclusion and / or failure to prove fraud under 12 O.S. 2001 § 1031 (4). Under the doctrine of issue preclusion, known at common law as

---

[2] Judge Franklin recused himself from the instant case after being sued by Plaintiff in Tulsa County District Court Case No. CJ-2005-4925. That lawsuit was dismissed on October 5, 2005, for improper venue and failure to state a claim upon which relief could be granted.

collateral estoppel.

> [O]nce a court has decided an issue of fact or law necessary to its judgment, the same parties or their privies may not relitigate that issue in a suit brought upon a different claim. Issue preclusion prevents relitigation of facts and issues *actually litigated and necessarily determined* in an earlier proceeding between the same parties or their privies. An (5) issue is actually litigated and necessarily determined if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined.

State ex rel. Okla. Bar Ass'n v. Giger, 2004 OK 43, Pgrf 13, 93 p.3d 32, 38 (emphasis in original, footnotes omitted).

9. In his initial motion to vacate the judgment in Case No. CJ-2002-151, his petition for a new trial in Case No. CJ-2004-121, and his related recusal motion, Plaintiff alleged the same fraud, based upon the same facts and against the same defendants, as that alleged in the instant proceeding. That issue was submitted for the trial court's determination in the first vacation / new trial / recusal action and was in fact disposed of by

the trial court's holding that Plaintiff failed to present any evidence of improper communication between opposing counsel and the trial judge. Under the doctrine of issue preclusion, Plaintiff is estopped from relitigating in this case the same issue that was finally adjudicated in the prior proceeding.

10. Second, Section 1031 (4) authorizes a trial court to vacate its judgments "for fraud, practiced by the successful party, in obtaining a judgment or order". "The standard of review of a trial court's ruling either vacating or refusing to vacate a judgment is abuse of discretion." *Ferguson Enter., Inc. v. H. Webb Enter., Inc.*, 2000 OK 78, Pgrf 5, 13 P.3d 480, 482. In a proceeding under S 1031 to vacate a judgment on the ground of fraud, the petitioner must, *inter alia*, "provide clear and convincing (6) evidence of fraud,....." *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, Pgrf 38, 987 P.2d 1185, 1200.

11. In the present case, Plaintiff has utterly failed to provide any, much less clear and convincing, evidence of fraud. The only evidence upon which Plaintiff relies is that counsel for Continental presented a notebook of authorities to the trial judge. We are cognizant of the fact opposing counsel neglected to provide Plaintiff with a copy of the notebook. However, Plaintiff makes no allegation that the notebook contained anything other than

copies of opinions, with some highlighted text, indexed to the summary judgment briefs. Such action does not constitute fraud. Plaintiff has failed to present any evidence of improper communications between opposing counsel and udge Franklin. The trial court did not abuse its discretion in refusing to vacate the original judgment.

12. In one of Defendants' answer briefs, this Court is asked to exercise its inherent power to enjoin Plaintiff from pursuing further vexatious litigation arising out of the original subject matter and / or based on any of the facts arising in the course of the various lawsuits that have preceded this appeal. Such an injunction request should be directed to the district court, a "first-instance tribunal with 'unlimited original jurisdiction of all justiciable matters .....' " Jernigan v. Jernigan, 2006 OK 22, Pgrf 16, 138 p.3d 539, 545, quoting OKLA. CONST. Art. 7 S 7(a) (footnote & emphasis (7) omitted). See also 20 O.S. 2001 S 30.1 and Rule 1.17 (I) of the *Oklahoma Supreme Court Rules,* 12 O.S. 2001, Ch 15, App. 1 regarding jurisdiction of this Court.

13. On the basis of the foregoing, the judgment of the trial court is affirmed.[3]

---

[3] This Court has previously denied Plaintiff's

14. AFFIRMED.

HANSEN, P.J., and BUETTNER, J., concur.

motion to disqualify Judge Carol M. Hansen, who authored the unanimous opinion in *Olson v. Continental Resources, Inc.*, 2005 OK CIV APP 13, 109 P.3d 351, *supra* at Pgrf 2, from participating in this proceeding. Appellant's Motion for Rehearing or Reconsideration of the Motion for the Disqualification of Court of Civil Appeals Judge, Carol M. Hansen, is hereby denied.

APPENDIX B

IN THE DISTRICT COURT OF BLAINE
COUNTY STATE OF OKLAHOMA

ROBERT OLSON,
Plaintiff

vs.

CONTINENTAL RESOURCES, et al.
Defendant.

CJ-2002-151

Blaine County, Oklahoma
FILED DEC 6, 2005
Rebekah Martin, Ct Clerk
s/b: Rebakah Martin

ORDER

The Court having reviewed the complete file in the instant case finds that a full final and complete resolution has been reached in the case. the Court notes the order entered by Hon. Ron Franklin granting Summary Judgment appealed to and affirmed by the Oklahoma Court of Civil Appeals and further that the Supreme Court of Oklahoma denied Plaintiff's application for a Writ of Certiorari.

The Court notes that it made the same findings in open court in the presence of the Plaintiff appearing pro se and the Defendants present by their attorneys on September 27, 2005, and further that the Court ordered Plaintiff to file no further pleadings or requests for relief in the instant case in the District Court of Blaine County, Oklahoma. Plaintiff was not and is not denied the right or opportunity to seek relief in any appellate court, state or federal in this case.

The Court finds that Plaintiff failed to timely urge his prayer for relief on the grounds of fraud and further that a complete review of the file fails to show the existence of any fraud in the obtaining of the judgment rendered by Judge Franklin.

This order was orally rendered in open court in the presence of Plaintiff and attorneys for Defendants.

Plaintiff was again advised of his absolute right to the assistance of counsel and his right to appeal from the orders of this Court.

Given under my hand this 6th of December, 2005.

s/b Ray Dean Linder, District Judge.

APPENDIX C

RELEASE FOR PUBLICATION IN THE OKLAHOMA BAR JOURNAL BY ORDER OF COURT OF CIVIL APPEALS

DIVISION I

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
MAY 18 2007
MICHAEL S. RICHIE
CLERK

May 17, 2007

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

102,933 - Robert Olson, plaintiff/Appellant, vs. Continental Resources, Inc., an Oklahoma Corporation; Harold Hamm, an individual and President and Chief Executive Officer of Continental Resources, Inc.; Tom Luttrell, an individual and Vice President of Continental Resources, Inc.; Davis Operating Company, an Oklahoma Corporation; and William H. Davis, an individual and President of Davis Operating Company,
Defendants/Appellees.

Plaintiff/Appellant's Petition for rehearing is DENIED.

103,656 - Gene Greer, Plaintiff/Appellant, vs. David Lee Personette, an individual, Wilburn C. Hall Jr., an individual, Mitchell D. Rozin, an individual, Midgard Corp., a domestic corporation David Lee Personette, usurper and defacto Director and Pres., of Midgard, X-C.P.A. cert 946, Wilburn C. Hall Jr. usurper, de facto director, offocer, creditor, general counsel, and attorney for Midgard, Jim Watkins, et al. de facto, debtors, directors of Midgard, Portable Milling Corp., an Okla. Corporation, David Personette, usurper de facto President of Portable Milling Corporation, Wilburn C. Hall Jr., usurper de facto Secretary of Portable Milling Corporation, Jim Watkins, et al. de facto directors of Portable Milling Corporation, Lorry Leasing Inc., an Oklahoma Corporation, David Personette, President of Lorry Leasing

Inc., William C. Hall Jr., Sec of Lorry Leasing, Inc., Enviro Fund Inc. reinstated Okla. Corp., Wilburn C. Hall, Pseudo Director and Officer, David Personette, Wilburn Hall, Jim Watkins, Mitchell Rozin Individually, and various actors unknown at this time, Notice Douglas Gould is an interested party, Notice Ken Felker is an interested party,

Defendants/Appellees.

Plaintiff/Appellant's Motion for rehearing is DENIED.

DONE BY ORDER OF THE COURT OF CIVIL APPEALS IN CONFERENCE this 17th day of May, 2007

s/b CAROL M. HANSEN
Presiding Judge

APPENDIX D

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

TUESDAY, SEPTEMBER 11, 2007

FILED
SUPREME COURT
STATE OF OKLAHOMA
SEPT 11 2007
MICHAEL S. RICHIE
CLERK

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

102,530 Superior Stucco, Inc., v. Record pools, Inc.
Petition for certiorari is denied.
CONCUR: Winchester,C.J.,Edmondson, V.C.J., Hargrave, Opala, Kauger, Watt, Taylor, Colbert, J.J.

102710 Jill Parker Zizzi v. Kurt William Zizzi
Petition for certiorari is denied
Motion for appeal-related attorney's fees is denied
CONCUR: Winchester,C.J.,Edmondson, V.C.J., Hargrave, Opala, Kauger, Watt, Taylor, Colbert, J.J.

102,933 Robert Olson v. Continental Resources, Inc.,an Oklahoma Corporation, et al.
Petition for certiorari is denied.
CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Watt, Taylor, Colbert,J.J.
DISSENT: Opala, Kauger, J.J.

103,368 In the matter of CC, MT, TT & TC, adjudicated deprived children: Nguyen & Christopher Cleveland v. State of Oklahoma
Petition for certiorari is denied.
CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Kauger, Watt, Taylor, Colbert, J.J.
DISSENT: Opala, J.

103,413 Gayla D. Foster v. Roger W. Foster
Petition for certiorari is denied.
CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Opala, Watt, Taylor, Colbert, J.J.
DISSENT: Kauger, J.

103,455 Jimmy Henry Collins v. UTI Energy Corporation, et al.
Petition for certiorari is denied.
CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Opala, Kauger, Watt, Taylor, Colbert, J.J.

103,718 Lonnie E. Hobbs v. Ronald E. Hobbs & Donald R. Hobbs
Petition for certiorari is denied.
CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Opala, Kauger, Watt, Taylor, Colbert, J.J.

104482 Shelley Vansicklev. The Honorable Mark Campbell etc.
Rehearing is denied.
CONCUR: Winchester, C.J., Edmondson, V.C.J., Hargrave, Kauger, Watt, Taylor, Colbert, J.J.
DISSENT: Opala, J. dissenting,
I dissent for the reasons assigned in my earlier statement.

s/b Winchester
CHIEF JUSTICE

APPENDIX E

IN THE COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA
DIVISION I

ROBERT OLSON, Plaintiff / Appellant vs.	)	FILED COURT OF CIVIL APPEALS STATE OF OKLAHOMA MAR-9 2007 MICHAEL S. RICHIE CLERK
CONTINENTAL RESOURCES, INC., an Oklahoma Corporation; HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an individual and Vice President of Continental Resources, Inc.,	)	
and,	)	Case No. 102,933
DAVIS OPERATING COMPANY, an Oklahoma Corporation; WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants / Appellees.	)	

ORDER

Appellant Robert Olson's Motion for Disqualification of Court of Civil Appeals Judge Carol M. Hansen is DENIED.

To disqualify a judge on the basis of a litigant filing a judicial complaint against that judge would give a litigant a means of forum shopping unacceptable to this Court.

DONE BY ORDER OF THE COURT OF CIVIL APPEALS IN CONFERENCE this 8th day of March, 2007.

HANSEN, P.J., BUETTNER, J., and BELL, J., concur.

s\ **Carol M. Hansen**

CAROL M. HANSEN
Presiding Judge

APPENDIX F

IN THE COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA
DIVISION I

ROBERT OLSON, Plaintiff / Appellant vs. CONTINENTAL RESOURCES, INC., an Oklahoma Corporation; HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an individual and Vice President of Continental Resources, Inc., and, DAVIS OPERATING COMPANY, an Oklahoma Corporation; WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants / Appellees.	**Filed March 15, 2007** **# 102,933** Appeal Case No. CJ-2002-151 District Court Case No.

MOTION FOR REHEARING OR RECONSIDERATION OF THE MOTIOM FOR THE DISQUALIFICATION OF COURT OF CIVIL APPEALS JUDGE CAROL M. HANSEN

COMES NOW, the Appellant, Dr. Robert

Olson, and requests the Court reconsider Appellant's Motion for the Disqualification of Court of Civil Appeals Judge Carol M. Hansen for the following reasons: (1)

1. The charge and allegation by Judge Hansen that the Appellant is forum shopping is bogus. I could have sued Judge Hansen to get recusal. If an attorney sued Judge Hansen, he would probably receive a repromand. I, Robert Olson, have proceeded with this disqualification request in a straightforward and honest manor.

2. Making the accusation of forum shopping shows Judge Hansen made an assumption, made a decision from that assumption and ruled from that assumption. This is an example of bias.

3. Making the accusation of forum shopping as the only basis for denying Appellant's first request for Disqualification (filed approximately Mar 2, 2007), Judge Hansen has provided an example of the sloppy and incomplete legal work that Appellant complained of in the first Request for Disqualification (filed approximately Mar 2, 2007).

In the denial Order of March 9, 2007, Judge Hansen did not address any of the other Reasons for Disqualification set forth in Appellant's first

Request for Disqualification (Mar 2, 2007). It could be perceived that (a) Judicial ego comes into play: Judge Hansen wants to remain in control of the case, (b) Judicial fear that Judge Hansen's cavalier treatment of oil and gas case law truth and Judge Hansen's gross plain error of not recognizing Appellant's attached evidentiary materials on his Responses to Defendants' Motions for (2) Summary Judgment in Blaine County, Oklahoma, Case CJ-2002-151, Appeal # 99704, would be exposed.

Judge Hansen had the Opinion in #99704 published. The way Judge Hansen wrote the Opinion and her legal analysis were not noteworthy concepts; thus that Opinion as written was not worth publishing. However, publishing is a way to try to cement the Opinion. Reversal of a published Opinion remains in the public record of the case law books forever. That provides a motive for Judge Hansen to want to remain in control of the case. It also puts Judge Hansen into a conflict of interest concerning the case.

Appellant hereby incorporates, by reference, all of Appellant's first Request or Motion for disqualification (Mar 2, 2007) into this request for reconsideration and this second request for Judge Hansen to disqualify.

4. The large, bold, heavy black ink, in-your-face signature on the denial Order, filed March 9, 2007, is a tangible manifestation of the Judge's anger at the Appellant. A copy of the denial Order is included as Exhibit A. (*Included as Appendix E herein.)*

ARGUMENT AND AUTHORITY

28 U.S.C.A. Section 455 states:

§ 455 Disqualification of justice, judge, or magistrate judge

(a) . Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably (3)
(underline is in the original filed document)
be questioned. (A faceplate copy is included as Exhibit B. *(not included herein).*

Whether judge believes he would be impartial is not the standard for disqualification; test is whether impartiality might reasonably be questioned. *Hampton v. Hanrahan,* N.D.Ill. 1980, 499 F. Supp. 640, Appeal dismissed 643 F.2d 478. Exhibit C. *{Exhibit C not included herein}*

Subsection (a) of this section governing disqualification of judges is whether a reasonable

person would infer that trial judge's impartiality might reasonably be questioned, ... *Crider v. Keohane,* W.D. Okla. 1979, 485 F. Supp. 13. Exhibit C. *{Exhibit C not included herein}*

! *{ The large bold exclamation mark was part of the original filed document}*

Bankruptcy judge's recusal was justified; judge stated that motion to disqualify him was inadequate, that complaint alleging judgcial misconduct had additionally been filed against him, that he believed defendants were manipulating system and that sanctions should be imposed against them, but determined that he had to recuse himself to preserve the integrity of bankruptcy system. *In re Winslow,* D. Colo. 1989, 107 B.R. 752. Exhibit D. *{Exhibit D not included herein}*

The Oklahoma Code of Judicial Conduct, Canon 3E(1) states: (1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, ...

This is the same wording as the federal standard for judicial disqualification except the word "shall" has been changed to "should". (4) *(underline is in the original filed document)*

Now the question becomes: Should Judge Hanse adhere to and follow the federal judicial disqualification standard or should Judge Hansen defy the federal judicial disqualification standard and equivocate or parse the word "should" in the Oklahoma Code of Judicial Conduct 3E(1) and try to maintain control of this case on appeal.

PRAYER

The Appellant implores the Court to read Judge Hansen's Opinion in Appeal # 99704 and read Appellant's Brief in Chief and Appellant's Reply Brief in this Appeal # 102933. The Appellant implores the Court to investigate this case for the truth.

Using the Rules to protect the judiciary when the premise of the protection is false actually injures the judiciary. The action of protection of the judiciary at the expense of long established oil and gas case law and at the expense of truth is an abuse of power.

The Appellant prays Judge Hansen be disqualified.

Respectfully submitted,

s\ Robert Olson

Respectfully submitted,

s\ Robert Olson
Robert Olson
9022 E. 60th St
Tulsa, Oklahoma 74145
918 252 1987 (5)

CERTIFICATE OF MAILING

I hereby certify that on this 14th day of March, 2007, a true and correct copy of the above and foregoing instrument was mailed via first class mail with proper postage fully prepaid thereon to:

Robert B. Sartin
Barrow & Grimm, P.C.
610 South Main, Suite 300
Tulsa, Oklahoma 74119 - 1248
918 584 1600

Attorneys for Defendants
Davis Operating Company,
William H. Davis

Blaine County Court Clerk
212 N. Weigle
Watonga, Oklahoma 73772

Glenn A. Devoll
Julia C. Rieman
Gungoll, Jackson, Collins, Box & Devoll, P.C.
P.O. Box 1549
Enid Oklahoma 73702
580 234 0436

Attorneys for Defendants / Appellees
Continental Resources, Inc.,
Harold Hamm, and
Tom Luttrell

s\ Robert Olson

Robert Olson, Pro Se
9022 E 60th St
Tulsa, Oklahoma 74145
918 252 1987

APPENDIX G

THIS OPINION HAS BEEN RELEASED FOR PUBLICATION BY ORDER OF THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
FEB 17 2004
MICHAEL S. RICHIE
CLERK

ROBERT OLSON Plaintiff / Appellant, vs. CONTINENTAL RESOURCES, INC., an Oklahoma corporation; HAROLD HAMM, individually and as President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, individually and as Vice President of Continental Resources,	)	Case No. **99,704**

Inc.; DAVIS OPERATING COMPANY, an Oklahoma Corporation; and WILLIAM H. DAVIS, individually and as President of Davis Operating Company,

Defendants / Appellees.

APPEAL FROM THE DISTRICT COURT
OF BLAINE COUNTY, OKLAHOMA

HONORABLE RONALD G. FRANKLIN,
TRIAL JUDGE

AFFIRMED (1)

Robert Olson,
Tulsa, Oklahoma,

Pro Se,
Plaintiff / Appellant,

Glenn A. Devoll,
Julia C. Rieman,
GUNGOLL, JACKSON,
COLLINS, BOX, &
DEVOLL, P.C.
Enid Oklahoma,

For Defendants /
Appellees,
Continental Resources,
Inc., Harold Hamm and
Tom Luttrell,

Robert B. Sartin,
Adam K. Marshall,
BARROW & GRIMM,
P.C.
Tulsa, Oklahoma,

For Defendants /
Appellees,
Davis Operating
Company and
William H. Davis.

OPINION BY CAROL M. HANSEN, Judge:

1. Plaintiff / Appellant, Robert Olson, seeks review of the trial court's order granting summary judgment in favor of Defendants / Appellees, Continental Resources, Inc. and its officers (collectively Continental) and Davis Operating Company and its President (collectively Davis). We affirm because Olson submitted no evidentiary materials establishing a material issue of fact.

2. Olson sued Continental and Davis to quiet title to an overriding royalty interest (ORRI) in an oil and gas lease and to recover damages for "sham legal process" and "civil conspiracy," based upon the following allegations. The minerals in Section 17, Township 16 North, Range 11 West Indian Meridian, Blaine County, Oklahoma, were leased during the years 1981 to 1984, and Olson acquired an ORRI in the section in (2) 1984. The Matli # 1-17 well was drilled and completed as a well capable of producing oil and gas in commercial quantities in 1984.

3. Continental acquired a 52% undivided interest in the leases in 1993 and became the operator of the Matli # 1-17 well. In September 1998, Continental set a bridge plug and removed tubing from the well.

In February 1999, Continental agreed with Marshal Oil Corporation (Marshall) to acquire new leases in Section 17 and sent out letters to all of the working interest owners recommending the Matli # 1-17 be plugged. One of the working interest owners refused to consent to plugging, and Continental assigned its interest in the wellbore to that owner. That owner then assigned its interest in the well and the leases to Davis.

4. Continental filed new leases on Section 17 on September 13, 1999. On September 20, 1999, Davis recompleted the well and brought it back into commercial production. The royalty interest owners under the old leases accepted shut-in royalty payments and accepted royalties from subsequent gas production. In October 1999, Continental sued Davis and Olson to quiet title in its favor. Continental and Davis reached a settlement agreement and dismissed Olson from the suit. The settlement called for Continental and Davis to release the old leases and to operate under the new leases. The releases of the old leases were filed October 2, 2000. An (3) additional well, the Matli #2-17, has been drilled and put into production. Olson has demanded and been refused payment for his override.

5. Olson asserted his override on the old leases carried forward to the new leases. He asserted the Defendants used sham legal process by filing new leases over the valid old ones, by filing a lawsuit to drive interest owners out of their original interests, and by releasing the old leases after new ones had been purchased for the purpose of washing out his ORRI. He also asserted the Defendants conspired to release the old leases and operate under the new ones so as to claim his ORRI was no longer valid.

6. Continental and Davis answered and denied liability. Davis counterclaimed to recover from Olson the sum of $7,957.93, which it claimed it mistakenly paid to Olson as overriding royalty after the old leases expired or were released.

7. Continental and Davis moved for summary judgment, submitting into evidence the old leases, Olson's ORRI, the new leases, certain pleadings from the 1999 suit, the releases settling the suit, and affidavits from their officers. The old leases provided the lessee could surrender the lease by delivering a release or placing it on record in the proper county. The ORRI did not contain a clause providing it applied to extensions and renewals of the underlying leases. Continental's officer stated the Matli # 1-17 was no longer producing in paying quantities at the time Continental set (4) the bridge plug in 1998. The pleadings from the 1999 suit showed that all the working interest owners

were parties to the suit and signed releases of the old leases in settlement of the suit. Davis submitted copies of a check and spreadsheet showing the payment it asserts it mistakenly made to Olson was based on production after the leases were released.

8. Olson objected to the motions for summary judgment , but submitted no evidentiary materials whatsoever. The trial court granted summary judgment to Continental and Davis on Olson's claims, concluding,

> [T]he old leases have quite probabl[y] expired under the terms of said leases for failure to produce. In addition thereto; it is undisputed or admitted that after the new leases were acquired and [Davis] had acquired a[n] interest in the old leases that a quiet title action was filed in Blaine County, that the plaintiff was named a party defendant and that the plaintiff asked for no affirmative relief and as a result thereof, a settlement was reached in said case which resulted in the plaintiff being dismissed in that lawsuit and the old leases voluntarily released, thereby extinguishing any interest the plaintiff owned in the leases.

The trial court granted summary judgment to Davis on its counterclaim against Olson, rendering judgment in the amount of $7957.93. Olson appeals from this order without appellate briefs in conformance with the procedures for the appellate accelerated docket, Okla. Sup. Ct. R. 1.36, 12 O.S. 2001, Ch 15, App. 1. (5)

9. Because a grant of summary judgment involves purely legal determinations, we will review the trial court's decision under a de novo standard. *Carmichael v. Beller,* 1996 OK 48, 914 P.2d 1051, 1053. A party may move for summary judgment on the ground that the evidentiary material filed with the motion shows there is no substantial controversy as to any material fact. 12 O.S.Supp. 2002, Ch. 2, App. 1, Rule 13(a). A party opposing summary judgment must file a concise written statement of the material facts as to which a genuine issue exists, along with evidentiary material justifying the opposition to the motion. Rule 13(b). "All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed

admitted for the purpose of summary judgment .... unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material." *Id.* If the trial court determines there is no substantial controversy as to the material facts and one of the parties is entitled to judgment as a matter of law, the court shall render judgment for that party. Rule 13(e).

10. Davis and Continental's statements of fact were supported by admissable evidence. Olson's statement controverted their assertions but was not accompanied by supporting evidentiary material. Therefore, we will deem Davis and Continental's statements admitted for the purpose of summary judgment. (6)

11. An overriding royalty interest is created out of the working interest in an oil and gas lease. It is an interest in the lease out of which it is carved, and cannot be a property interest of greater dignity than the lease itself. *XAE Corp. v. SMR Property management Co.*, 1998 OK 51, 968 P.2d 1201, 1206-1207. Therefore, the overriding royalty interest

does not survive termination of the lease, absent fraud, breach of a fiduciary relationship, or an agreement otherwise. *DeMik v. Cargill,* 1971 OK 61, 485 P.2d 229, 233, and *Probst v Hughes,* 1930 OK 57, 143 Okla. 11, 286 P. 875, 879.

12. The assignment of an overriding royalty interest out of the leasehold interest does not by itself create a fiduciary relationship between assignor and assignee. *Brannan v. Sohio Petroleum Co. (Brannan II),* 260 F.2d 621, 622 (10th Cir. 1958) (applying Oklahoma law).[1] Therefore, there is no relationship of trust and confidence between assignor and assignee which proscribes the lessee from acquiring a new lease, unburdened by the overriding royalty interest, from the owner of the land to take effect upon the expiration of the assigned lease. *Brannan v. Sohio Petroleum Co. (Brannan I),* 248 F.2d 316, 318 (10th Cir. 1957). However, a fiduciary relationship may arise from other factors, such as when no consideration is paid for an assignment (7) at the time of transfer and the assignor is to be paid from production. *Rees v. Brisco,* 1957 OK 174, 315 P.26 758, 763.

13. The rights of an overriding royalty owner in future leases are protected if the assignment

---

1 *See also Hawkins v. Klein,* 1926 OK 819, 255 P.570, 575, 124 Okla. 161, and 3 SUMMERS, THE LAW OF OIL AND GAS, § 554, nn. 62-62 (Perm. ed. Supp. 2003).

contains a clause providing the override applies to extensions or renewals of the original lease from which it is carved. For example, in *Probst v. Hughes,* 1930 OK 57, 286 P. 875, 876, 143 Okla. 11, the agreement stated the overriding royalty interest would "apply as to all modifications, renewals of such lease or extensions that the assignee, his successors or assigns may secure." The court held a second lease taken by the lessee from the fee owner before expiration of the first lease was a renewal of the first lease, even though the well had ceased production and was plugged.

14. Similarly, in *Thornburgh v. Cole,* 1949 OK 167, 207 P.2d 1096, 201 Okla. 609, the assignment of an overriding royalty interest in a coal mining lease provided the override would apply to extensions, renewals, or modifications of the existing leases. The Court ruled future leases to the grantor of the interest or its successors would be bound by the override. 207 P.2d at 1100. The *Thornburgh* Court contrasted the facts in its case with those in *La Laguna Ranch Company v. Dodge,* 18 Cal.2d 132, 114 P.2d 351, 353. There "the lease provided that the lessee might surrender the lease by quit-claiming to the lessor. This was done and the overriding royalty interest was thus (8) extinguished, because the agreement did not provide that the overriding royalty should apply to renewal, extension or modification of the lease."

Thornburgh, 207 P.2d at 1100.

15. The facts in the record before us are like those in *La Laguna Ranch.* The oil and gas leases specifically provided the lessee could at any time surrender the lease or any part of it by delivering or mailing a release to the lessor, or by placing a release of record in the proper county. Olson's ORRI did not provide it applied to extensions or renewals of the original lease. There are no circumstances giving rise to a fiduciary relationship between Olson and Continental or Davis. Therefore, when all the working interest owners released the leases on Section 17, the lease from which Olson's ORRI was carved ceased to exist, and his ORRI did not survive the termination of the lease. The trial court did not err in granting summary judgment to Davis and Continental on Olson's claim for quiet title and to Davis on its claim for overpaid royalties to Olson.

16. Olson also sought to recover for sham legal process and civil conspiracy. Sham legal process is a criminal matter. It means the use of an instrument that is not lawfully issued and that purports to be a summons, subpoena, judgment, arrest warrant, search warrant, or other order of a court or that purports to assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, (9) powers, or privileges of any person or property. 21 O.S.Supp. 2003 § 1533(H)(1)(a) and (b). The statutes relating

to quiet title allow an attorney fee to the prevailing party if a party alleges the adverse claim is sham legal process as defined in §1533 above. 12 O.S. 2001 §1141(B). Olson submitted no evidence Continental or Davis used any instrument meeting the statutory definition of sham legal process. The trial court did not err in granting summary judgment against Olson on this claim.

17. In *Brock v. Thompson,* 1997 OK 127, 948 P.2d 279, 294 (footnotes omitted), the Court stated, "A civil conspiracy consists of a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. Unlike its criminal counterpart, civil conspiracy itself does not create liability. To be liable the conspirators must pursue an independently unlawful purpose or use an independently unlawful means. There can be no civil conspiracy where the act complained of and the means employed are lawful." Olson submitted no evidence Continental or Davis pursued an unlawful purpose or used unlawful means. The trial court did not err in granting summary judgment against Olson on this claim.

18. For the foregoing reasons, the trial court's judgment is AFFIRMED.

JOPLIN, J., and MITCHELL, P.J., concur.

APPENDIX H

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

ROBERT OLSON,)	FILED SUPREME COURT
Appellant,)	STATE OF OKLAHOMA
v.)	APR 05 2004
CONTINENTAL)	MICHAEL S. RICHIE
RESOURCES,)	CLERK
INC., ET AL.)	
Appellees.)	No.. 99,704

ORDER

The appellant's petition for certiorari is denied. The motion of appellee Continental Resources for an attorney's fee for appeal-related services, based on prevailing party status under 12 O.S. 001 Section 1141(B), is granted in an amount to be set by the trial court in an adversary proceeding after mandate. The motion for an appeal relared attorney's fee of the appellee Davis Operating Company pursuant to 12 O.S. 2001 Section 1141.5 is provisionally granted according to *GRP of Texas, Inc. v. Eateries, Inc.*, 2001 OK 53, 27 P.3d 95. If the appellee secure an attorney's fee in the trial court, upon the showing of a refusal to deliver a curative instrument or take corrective action responsive to a notice which does not appear

of record before this court, the appellee may similarly recover a fee for appeal related services.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 5TH DAY OF APRIL, 2004.

s\ Joseph M. Watt
CHIEF JUSTICE

WATT,C.J., HODGES, LAVENDER, HARGRAVE, KAUGER, BOUDREAU,WINCHESTER AND EDMONDSON, J.J., concur.

OPALA, V.C.J., concurs in part; dissents in part.

OPALA, V.C.J., dissenting in part.

I concur in denying certiorari; I dissent from allowing appeal-related counsel-fee awards.

APPENDIX I

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON Plaintiff, vs. CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company Defendants.	BLAINE COUNTY, OKLAHOMA FILED JAN 25 2005 REBEKAH MARTIN CT CLERK BY *unreadable* DEPUTY Case No. CJ-2004-121 Case No. CJ-2002-151

ORDER DENYING MOTION FOR JUDGE FRANKLIN TO RECUSE

NOW on this 13th day of January, 2005, there comes on for consideration in both the referenced cases, the Plaintiff's Motion for Judge Franklin to Recuse on both cases. Plaintiff, Robert

Olson, appears *pro se* and Defendants, Continental Resources, Inc., Harold Hamm and Tom Luttrell appear by and through their counsel of record, Glenn A. Devoll and Julia C. Rieman of the Gungoll, Jackson, Collins, Box & Devoll, P.C. The Court entertained argument from Plaintiff and counsel for the defendants and reviewed the Affidavit of Julia C. Rieman on file herein and considered the statement in open court of Glenn A. Devoll as an officer of the court concerning the allegations relating to said counsel's contact with Judge Franklin.

The Court finds as follows:

1. That there was no improper contact between Judge Franklin and Glenn A. Devoll, all of such contact having been by phone and related to scheduling of motions and hearings in this cause. Plaintiff has presented no evidence that any contact between counsel and Kudge Franklin related to any issue that would have been improper and outside the scope of setting hearings.

2. The notebook presented to Judge Franklin about which Plaintiff has complained was simply a notebook containing copies of cases cited in both Plaintiff and Defendants' Briefs. It is common practice for counsel to present such notebooks to the Court as an aid to the Court and

the presentation of the notebook to the Court was not an improper *ex parte* contact.

3. There is no 3.

4. There is no basis, either in fact or in law, based upon Plaintiff's motion and allegation to require Judge Franklin to recuse from either of the referenced cases.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judge Ronald Franklin shall remain the judge in both of the above referenced cases.

s\ Ray Dean Linder
The Honorable Ray Dean Linder
Judge of the District Court

mitchie/gad/continental/olson/order

APPENDIX J

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

ROBERT OLSON, Petitioner, v. THE HONORABLE RONALD G. FRANKLIN District Judge, of Blaine County, Respondent.	FILED SUPREME COURT STATE OF OKLAHOMA FEB 28 2005 MICHAEL S. RICHIE CLERK No. 101,682

ORDER

Original jurisdiction is assumed. Petitioner's petition for a writ of mandamus is denied. Canon 3(B)(6)(a) of the Code of Judicial Conduct.

The request of the real parties in interest for sanctions pursuant to Rule 1.191(j) of the Oklahoma Supreme Court Rules is denied.

DONE BY THE ORDER OF THE SUPREME COURT IN CONFERENCE THIS 28TH DAY OF FEBRUARY, 2005.

s\ Joseph M. Watt
CHIEF JUSTICE

WATT, C.J., WINCHESTER, V.C.J., LAVENDER,

HARGRAVE, EDMONDSON, TAYLOR, COLBERT, J.J. ---Concur

OPALA, J., with whom KAUGER, J. joins, dissenting in part.

I concur in denial of sanctions and dissent from the court's denial of mandamus.

APPENDIX K

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON,	)	
Plaintiff,	)	
Vs.	)	
	)	
CONTINENTAL RESOURCES,	)	CJ-2002-151
INC., an Oklahoma Corporation,	)	
HAROLD HAMM, an individual	)	
and president and Chief Executive	)	
Officer; TOM LUTTRELL, an	)	
individual and Vice President of	)	
Continental Resources, Inc.,	)	
	)	
And	)	
	)	
DAVIS OPERATING COMPANY,	)	
an Oklahoma Corporation,	)	
WILLIAM H. DAVIS, an individual	)	
and President of Davis Operating	)	
Company,	)	
Defendants	)	

BLAINE COUNTY, OKLAHOMA
FILED
AUG 11 2003
REBEKAH HANEY, CT CLERK
BY *Unreadable*
DEPUTY

ORDER

FINDINGS OF FACT

The court after reviewing the parties motions for summary judgment, the objections thereto, and the replies to the objections thereto. Based on the undisputed facts, the court finds the following facts to be undisputed based on admissable evidence as contained as the motions for summary judgments the objections to the motions for the summary judgments, the briefs filed by the parties and any replies thereto, as well as those facts which the parties admit are undisputed.

1. The leases which are a basis for the plaintiff's action were executed in 1981 with a primary term of 3 years and 1984 with a primary term of 1 year and as long thereafter as oil and gas is produced (old leases). (1)

2. On June 28, 1984, plaintiff obtained a 1.5% overriding royalty interest which did not contain an extension and renewal clause on Section 17 (17), Township sixteen (16) North, Range Eleven (11) W. I.M. Blaine County, Oklahoma, property subject to the old leases. In September of 1993, Continental Resources, Inc. (CRI) acquired an undivided interest of approximately 52% in the oil leases and a 52% working interest in the Matli #1-17 well in Section

17, which had commenced producing commercial quantities in July 1994 (*actually July 1984, a typo in the original order),* and extended those leases in their secondary terms. By September 1998, The Matli well #1-17 was not producing in paying quantities and in march 1999, CRI set a bridge plug and removed the tubing from the well, rendering it physically incapable of producing in paying quantities.

3. In September 1998, CRI had entered into a farm out agreement with Marshall Oil Corporation; that Marshall was to drill a second well in Section 17, however Marshall did not perform and in January 1999, Marshall acknowledged to CRI, that its failure to perform under the farm out agreement probably resulted in the oil leases expiring by their own terms and Marshall then offered to acquire new leases. In February 1999, CRI notified the working interest that it recommended that the multi (*Matli ?)* well # 1-17 be plugged. Thomas Hill Puff ("Puff") declined to consent to the plugging of the well and in May of 1999, CRI assigned its working interest in the Matli #1-17 well to Hill Royalty Company and retained its record ownership of 52% of the old leases, exclusive of the Matli well bore. In June of 1999, Hill Royalty Company assigned all of its interest in the old leases to Davis Operating

Company (DOC).

4. In August, 1999 CRI preformed [*performed ?*] an inspection and discovered there had been no work preformed [*performed ?*] on the well and that no steps to drill a new well had been taken.

5. On September 2, 1999, CRI advised DOC in writing that in their opinion the old leases had expired on their own terms and CRI would proceed to acquire new leases and demanded DOC release any right title and or interest in the old leases, which DOC declined to do. In September of 1999, CRI acquired new leases in Section 17 and DOC commenced recompletion operations of the Matli #1-17.

6. In October, 1999, CRI filed its petition to quiet title in the District Court of Blaine County No CJ-99-123, naming DOC and Robert Olsen (Olsen) as defendants. At a later time a third party petition was filed against Puff dba Hill Royalty Company.

7. On July 27, 2000, the parties attended a court ordered settlement conference in which Puff, CRI and DOC reached a settlement of all the outstanding issues in CJ-99-123 and pursuant to the settlement on July 28, 2000, CRI dismissed

Olsen from said lawsuit. On October 10, 2000, pursuant to the settlement, DOC filed releases of the old leases and were required to provide new consideration for an interest in the new leases. (2)

8. Olsen had not asked for any affirmative relief in CJ-99-123 Blaine County, prior to his being dismissed from the case.

9. The plaintiff's rights arise solely from the old leases and remain only through the term of the old leases, which provided that the lease leasee had the right to unilaterlly terminate a lease by a voluntary release thereof.

10. Tom Luttrell, Harold Hamm and William H. Davis do not claim any right title or interest in the old or new leases and have acted only in their capacity as corporate officers. That each of the corporation named as defendants herein, are corporations in good standing, that DOC by the release of the interest on the old lease had it selling of the interest in the new lease, no longer claims any right title and or interest in the new leases.

12. [there is no 11] Prior to plaintiff's filing his objection to summary judgment and other responses no request or extension of time to respond

to the motion for summary judgments was made by the plaintiff.

13. DOC paid to the plaintiff the sum of $7,957.93 after the old leases had been released.

14. DOC has not been reimbursed for the sums paid to the plaintiff after the release of the old releases.

CONCLUSIONS OF LAW

15. The court will only consider the affidavits and other materials that contain facts that would be admissable in evidence and will not consider allegations and denials contained in the plaintiff's pleadings, Bray vs. Thomas Energy Systems, Inc. 909 p2 91 (1995). Plaintiff did not file an affidavit attesting to the need of further discovery, but only made the request in his response and objection to defendant's motion for summary judgment and is not entitled to conduct further discovery prior to the ruling on the summary judgment, Bittle vs. Oklahoma City University 6 P3 509 (2000) Pursuant to Rule 13 of the District Courts, a summary judgment ruling must be made on the record actually presented by the litigants, not on a record potentially possible and although the allegations of the pleadings standing alone may

raise an issue of material fact, summary judgment is not to be denied if other documentation pertinent to the motions, show absence of such issue, Bittle vs. Oklahoma City University 6 P3 509. (3)

16. Based on the admissable evidence it is undisputed that the old leases have quite probable expired under the terms of said leases for failure to produce. In addition thereto; it is undisputed or admitted that after the new leases were acquired and DOC had acquired a interest in the old leases that a quiet title action was filed in Blaine County, that the plaintiff was named a party defendant and that the plaintiff asked for no affirmative relief and as a result thereof, a settlement was reached in said case which resulted in the plaintiff being dismissed in that lawsuit and the old leases voluntarily released, thereby extinguishing any interest the plaintiff owned in the leases. The court takes judicial notice of the pleadings in CJ-99-123 Blaine County, Oklahoma.

17. The evidence is further undisputed or admitted that DOC after termination of the plaintiff's interest, paid to the plaintiff the sum of $957.93 for royalty interest payments from December, 2000 to November, 2001.

18. That the defendants Harold Hamm, Tom

Luttrell and William H. Davis were acting in their capacity as officers of CRI and DOC and have no claims in the and there is no admissible evidence presented showing a conspiracy by the individuals to defraud the plaintiff in any respect.

19. The admissible evidence also shows that CRI and DOC did not take any actions with intention of defrauding or injuring the plaintiff, nor conspired to cause injury to the plaintiffs.

20. The plaintiff has no interest in the new leases and does not have any standing to quiet title.

21. It is therefore ordered adjudged and decreed, that the defendant, CRI, Harold Hamm, Tom Luttrell and William H. Davis' motions for summary judgment are sustained and judgment is granted in their favor against the plaintiff. The defendant DOC's motion for summary judgment is granted and judgment is rendered in favor of DOC and against the plaintiff in the amount of $7,957.93. All defendants are awarded their costs.

s/b RONALD G FRANKLIN
DISTRICT JUDGE

(4)

(All spelling, punctuation, sentence structure, etc. of the order have been preserved)

APPENDIX L

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff, vs. CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., DAVIS OPERATING COMPANY, an Oklahoma corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants.	BLAINE COUNTY OKLAHOMA FILED JUN 16 2005 REBEKAH MARTIN CT CLERK BY Christy Matli DEPUTY cgd Case No. CJ-2002-151

ORDER OVERRULING MOTION TO VACATE AND PETITION FOR NEW TRIAL

Now on this 31st day of March 2005, the Court having received the mandate from the Supreme Court in Case No. 99704 wherein the Court of Civil Appeals affirmed this Court's

Summary Judgment entered August 11, 2003 and being cognizant of the ruling of the Supreme Court in case No. 101682 wherein that Court assumed original jurisdiction and denied the Plaintiff, Robert Olson's request for issuance of a writ of mandamus to this Court, the Court **FINDS;**

That the Plaintiff's request for issuance of a writ of mandamus to this Court in Case No. 101682 was based on the same facts and evidence raised by the Plaintiff in his Motion to Vacate the Trial Court's Order In District Court Case CJ-02-151 Due to the Appearance of Judicial Prejudice (the Motion), filed in this case on October 22, 2004 and his Petition for a New Trial in (1) District Court Case CJ-2004-121 (sic; filed in Case CJ-20020151) Due to the Appearance of Judicial prejudice (the "Petition), filed in this case on October 26, 2004;

That the issues raised by the Plaintiff in the Motion and Petition are moot as a result of the rulings of the Court of Civil Appeals and the Supreme Court in Case No. 99704 and Case No. 101682.

IT IS THEREFORE, ADJUDGED AND DECREED that the Plaintiff's Motion to Vacate the Trial Court's Order In District Court Case CJ-02-151 Due to the Appearance of Judicial Prejudice, filed in this case on October 22, 2004 and his

Petition for New Trial in ~~District Court Case CJ-2004-121~~ {strikethrough is initialed by RBS, RWO and JR} (sic; filed in Case No. CJ-2002-151) Due to the Appearance of Judicial Prejudice, filed in this case on October 26, 2004 are hereby **OVERRULED.**

The Court takes notice of the Plaintiff's objection to this ruling.

SO ORDERED this 16th day of June 2005.

s\ R

The Honorable, Ronald G. Franklin,
District Judge

APPROVED AS TO FORM:

s\ Julia C. Rieman

Glenn A. Devoll, OBA #2327
Julia C. Rieman, OBA #15337
Gungoll, Jackson, Collins, Box & Devoll, P.C.
P.O. Box 1549
323 West Broadway
Enid Oklahoma 73702 - 1549
(580) 234-0436 - Telephone
(580) 233-1284 - Facsimile

Attorneys for Defendants
Continental Resources, Inc.
Harold Hamm and Tom Luttrell

(2)

s\ Adam Marshall
Robert B. Sartin, OBA #12848
Adam Marshall, OBA #19871
610 South Main, Suite 300
Tulsa, Oklahoma 74119 - 1600

Attorneys for Defendants
Davis Operating Company and
William H. Davis

s\ Robert Olson
Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145

Plaintiff (Pro Se) (3)

APPENDIX M

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.S. Const. Amend. 14, § 1 (2005)

Sec. 1. [citizens of the United States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C.A. § 455 (a)

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

APPENDIX N

Oklahoma Statutes Involved

Oklahoma Court Rules and Procedure
State
2005

THOMSON
WEST

CHAPTER 16

VACATION AND MODIFICATION OF JUDGMENTS BY TRIAL COURT

TITLE 12, OKLAHOMA STATUTES

Section 1031. **District court, power to vacate or modify its judgments, when**

The district court shall have power to vacate or modify its own judgments or orders within the times prescribed hereafter:

1. By granting a new trial for the cause, within the time and in the manner prescribed in Sections 651 through 655 of this title;

2. As authorized in subsection C of Section 2004 of this title where the defendant had no actual notice of the pendency of the action at the time of the filing of the judgment or order;

3. For mistake, neglect, or omission of the clerk

or irregularity in obtaining a judgment or order;

4. For fraud, practiced by the successful party, in obtaining a judgment or order;

5. For erroneous proceeding against an infant, or a person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings;

6. For the death of one of the parties before the judgment in the action;

7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending;

8. For errors in a judgment, shown by an infant in twelve (12) months after arriving at full age, as prescribed in Section 700 of this title; or

9. For taking judgments upon warrants of attorney for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.

R.L.1910, Section 5267; Laws 1969, c. 304, Section 3, emerg. eff. April 28, 1969; Laws 1999, c. 293, Section 9, eff. Nov. 1, 1999.

Section 1031.1. **Authorization to correct, open, modify or vacate judgments — Time — Notice**

A. A court may correct, open, modify or vacate a judgment, decree, or appealable order on its own initiative not later than thirty (30) days after the judgment, decree, or appealable order prepared in

conformance with Section 696.3 of this title has been filed with the court clerk. Notice of the court's action shall be given as directed by the court to all affected parties.

B. On Motion of a party made not later that thirty (30) days after a judgment, decree, or appealable order prepared in conformance with Section 696.3 of this title has been filed with the court clerk, the court may correct, open, modify, or vacate the judgment, decree, or appealable order. If the moving party did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion to correct, open, modify, or vacate the judgment, decree, or appealable order may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party. The moving party shall give notice to all affected parties. A motion to correct, open, modify, or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or

decree shall be deemed filed immediately after the filing of the judgment or decree.

C. After thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order shall be by petition in conformance with Section 1033 of this title.

Laws 1969, c. 304, Section 1, emerg. eff. April 28, 1969; Laws 1990, c. 251, Section 15, eff. Jan. 1, 1991; Laws 1991, c. 251 Section 19, eff. June 1, 1991; Laws 1993, c. 351, Section 25, eff. Oct. 1, 1993; Laws 1994, c. 343, Section 6, eff. Sept. 1, 1994; Laws 1997, c. 102, Section 9, eff. May 1, 1997; Laws 1999, c. 293, Section 10, eff. Nov. 1, 1999.

Section 1032. **Proceedings to be by motion—— Notice**

The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action.

R.L.1910, Section 5268; Laws 1969, c. 304, Section 4, emerg. eff. April 28, 1969; Laws 1993, c. 351, Section 26, eff. Oct. 1, 1993.

Section 1033. **Proceedings by petition, when —— Summons**

If more than thirty (30) days after a judgment,

decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order, on the grounds mentioned in paragraphs 2, 4, 5, 6, 7, 8, and 9 of Section 1031 of this title, shall be by petition, verified by affidavit, setting forth the judgment, decree, or appealable order, the grounds to vacate or modify it, and the defenses to the action, if the party applying was defendant. On this petition, a summons shall issue and be served as in the commencement of a civil action.

R.L.1910, Section 5269; Laws 1999, c. 293, Section 11, eff. Nov 1, 1999.

Section 1034. **Trial of application to vacate**

The court may first try and decide upon the grounds to vacate or modify a judgment or order before trying or deciding upon the validity of the defense or cause of action.

R.L.1910, Section 5270.

Section 1035. **Liens and securities preserved**

If a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

R.L.1910 Section 5271; Laws 1990, c. 251, Section 16, eff. Jan. 1, 1991.

Section 1036 **Suspending proceedings —Bond**

The party seeking to vacate or modify a judgment or order, may obtain an order suspending proceedings on the whole or part thereof; Which order may be granted by the court, or any judge thereof, upon its being rendered probable, by affidavit, or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified. On the granting of any such order, the court, or judge, may require the party obtaining any such order to enter into an undertaking to the adverse party to pay all damages that may be caused by granting of the same.

R.L.1910, 5272.

Section 1037. **Suspension where judgment given prematurely**

When the judgment was rendered before the action stood for trial, the suspension may be granted, as provided in the last section,[1] although no valid defense to the action is shown; and the court shall make such orders, concerning the executions to be issued on the judgment as shall give to the defendant the same rights of delay he would have had if the judgment had been rendered at the proper time.

R.L.1910, Section 5273

1. Title 12, Section 1036.

Section 1038. **Limitations**

Proceedings to vacate or modify a judgment, decree, or order, for the causes mentioned in paragraphs 4, 5, and 7 of Section 1031 of this title must be commenced within two (2) years after the filing of the judgment, decree or order, unless the party entitled thereto be an infant, or a person of unsound mind and then within two (2) years after removal of such disability. Proceedings for the causes mentioned in paragraphs 3 and 6 of Section 1031 of this title, shall be within three (3) years, and in paragraph 9 of Section 1031 of this title, within one (1) year after the Defendant has notice of the judgment, decree or order. A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby.

R.L.1910, Section 5274; Laws 1990, c. 251, Section 17, eff. Jan. 1, 1991;Laws 1991, c. 251, Section 20, eff. June 1, 1991; Laws 1993, c. 351, Section 27, eff. Oct. 1, 1993.

APPENDIX O

Exerpts from the

OKLAHOMA RULES OF PROFESSIONAL CONDUCT

Effective July 1, 1988

Including Amendments Received Through November 1, 2004

Research Notes

Annotations to the Oklahoma Rules of Professional Conduct are available in Oklahoma Statutes Annotated, Title 5, Chapter 1, Appendix 3-A, and in OK-RULES database on Westlaw. Westlaw may also be used to search for specific terms in court rules or to update court rules. See the OK-RULES and OK-ORDERS Scope Screens for further information.

Amendments to these rules are published , as received, in the P.3d and Oklahoma Decisions advance sheets.

RULE 1.2 SCOPE OF REPRESENTATION

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d) and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision

whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitation on the lawyer's conduct.

[Adopted effective July 1, 1998.]

RULE 3.3 CONDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

(3) fail to disclose to the tribunal legal authority

in the controling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take the following remedial measures.

(A) When a client has offered false evidence, the lawyer shall promptly call upon the client to rectify the same; if the client refuses or is unable to do so, the lawyer shall promptly reveal its false character to the tribunal; or

(B) When a person other than a client has offered false evidence, the lawyer shall promptly reveal its false character to the tribunal.

(b) The duties stated in paragraph (a) are continuing and apply even if compliance required disclosure of information otherwise protected by Rule 1.6.

Misleading legal Argument. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in Paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controling jurisdiction which has not been disclosed by the opposing party. The underlying concept is

that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other decision maker except as permitted by law or the rules of the tribunal.

(b) in an adversary proceeding, communicate or cause another to communicate as to the merits of the cause, with a judge or an official before when the proceeding is pending except:

(1) in the course of the official proceeding in the cause;

(2) in writing if the lawyer promptly delivers a copy of the writing to the opposing counsel or to the adverse party if not represented by a lawyer;

(3) orally upon notice to opposing counsel or to the adverse party if not represented by a lawyer; and

(4) as otherwise authorized by law; or

(c) communicate directly or through another with a juror or prospective juror except as permitted by law or the rules of court; or

(d) engage in conduct intended to disrupt a tribunal.

[Adopted effective July 1, 1988.]

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversly on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

[Adopted effective July 1, 1988.]

APPENDIX P

Exerpt from the

CODE OF JUDICIAL CONDUCT

Effective November 1, 1997

Including Amendments received through November 1, 2003

Research note

Annotations to the Code of Judicial Conduct are available in Oklahoma Statutes annotated, Title 5 Chapter 1, Appendix 4, and in the OK-RULES database on Westlaw. Westlaw may also be used to search for specific terms in court rules or to update court rules. See the OK-RULES and OK-ORDERS Scope Screens for further information. Amendments to these rules are published, as received, in the P.3d and Oklahoma Decisions advance sheets.

Canon

1. A Judge Should Uphold the Integrity and Independence of the Judiciary.
2. A Judge Should Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. [Effective November 1, 1997.]

CANON 2. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.

A. A judge should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, political or other relationships to influence the judge's judicial conduct ot judgment. A judge

should not lend the prestige of judicial office to advance the private interests of the judge or others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.
[Effective November 1, 1977.]

CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office proscribed by law. In performance of those duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge should require order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he the judge deals in official capacity, and should require similar conduct of lawyers, and of his staff, court officials and others

subject to the judge's direction and control.

(4) A judge should perform judicial duties without bias or prejudice. A judge should not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit staff, court officials and others subject to the judge's direction and control to do so.

(5) A judge should require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(5) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(6) A judge should accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge should not initiate, nor consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte

communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided that the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, with a record being made, a d affords the parties reasonable opportunity to respond.

C. Disciplinary Responsibilities. A judge should report to the appropriate disciplinary authority any unprofessional conduct of a judge or lawyer of which the judge may become aware.

D. Disqualification. A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, ...

APPENDIX Q

RULES FOR DISTRICT COURTS OF OKLAHOMA

Adopted Effective January 1, 1982, Including Amendments Received through November 1, 2004
O.S. Title 12, Chapter 2, Appendix 1

RULE 13. SUMMARY JUDGMENT OR SUMMARY DISPOSITION OF ISSUES

a. A party may move for either summary judgment or summary disposition of any issue on the merits on the ground that the evidentiary material filed with the motion or subsequently filed with leave of court show that there is no substantial controversy as to any material fact. The motion shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary judgment or summary disposition of any issues should be granted. Reference shall be made in the statement to the pages and paragraphs or lines of the evidentiary materials that are pertinent to the motion. Unless otherwise ordered by the court, a copy of the material relied on shall be attached to the statement.

The motion may be served at any time after the

filing of the action, except that, if the action has been set for trial, the motion shall be served at least twenty (20) days before the trial date unless an applicable scheduling order establishes an earlier deadline. The motion shall be served on all parties and filed with the court clerk.

b. Any party opposing summary judgment or summary disposition of issues shall file with the court clerk within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion; provided, however, that a responsive statement shall not be due from a party earlier than forty-five (45) days after service of the first summons by, or upon that party. Unless otherwise ordered by the court, the adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of another party. In the statement, the adverse party or parties shall set forth and number each specific material fact which is claimed to be in controversy and reference shall be made to the pages and paragraphs or lines of the evidentiary materials. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary judgment or summary disposition unless specifically controverted by the statement of the adverse party which is

supported by acceptable evidentiary material. If the motion for summary judgment or summary disposition is granted, the party or parties opposing the motion cannot on appeal rely on any fact or material that is not referred to or included in the statement in order to show that a substantial controversy exists.

c. The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissable at trial. The admissibility of other evidentiary material filed by either party shall be governed by the rules of evidence. If there is a dispute regarding the authenticity of a document or admissibility of any submitted evidentiary material, the court may rule on the admissibility of the challenged material before disposing of the motion for summary judgment or summary disposition. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material. Evidentiary material that does not appear to be convertible to admissible evidence at trial shall be challenged by objection or motion to strike, or the objection shall be deemed waived for the purpose of the decision on the motion for summary judgment or summary disposition. If a trial of the factual issues is required after proceedings on a motion for summary judgment or

summary disposition, evidentiary rulings in the context of the summary procedure shall be treated as rulings *in limine.*

d. Should it appear from an affidavit of a party opposing the motion that for reasons stated the party cannot present evidentiary material sufficient to support the opposition, the court may deny the motion for summary judgment or summary disposition without prejudice or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just. A motion filed pursuant to this paragraph shall not be deemed a consent to the exercise by the court of jurisdiction over the party, or a waiver of the right to file a motion to dismiss the action.

e. If it appears to the court that there is no substantial controversy as to the material facts and and that one of the parties is entitled to judgment as a matter of law, the court shall render judgment for said party.

If the court finds that there is no substantial controversy as to certain facts or issues, the court may enter an order specifying the facts or issues which are not in controversy and direct the action proceed for a determination of the remaining fact or issues. An order denying either summary judgment or summary disposition is interlocutory and is not reviewable on appeal prior to final judgment.

subject to accelerated appellate review under Rule 1.36 of the Oklahoma Supreme Court Rules. The record on appeal will be limited to:

(1) the memorialized entry of judgment; in multi-party or multi-claim cases the judgment or dismissal order must *either* (1) dispose of all claims and all parties or (2) entirely dispose of at least one claim or one party *and* contain the express determination that there is no just reason for delay with the express direction by the trial judge that judgment be filed. See 12 O.S. Section 994.

(2) pleadings proper as defined by 12 O.S. Section 2007(A);

(3) applicable instruments on file, including the motion and response with supporting briefs and materials filed by the parties as prescribed by subsections (a) and (b);

(4) any other item on file which, according to some recitation in the trial court's written journal entry or in some other order, was considered in its decision;

(5) any other order dismissing the claim or determining the issues as to some but not all parties or claims;

(6) any transcripts of the hearing on the motion;

(7) any motions, along with supporting and responsive briefs, for a new trial (re-examination) of summary judgment or appealable summary disposition process.

[Withdrawn and replaced effective November 1, 1984; amended June 29, 1993; amended effective September 16, 2002.]

subject to accelerated appellate review under Rule 1.36 of the Oklahoma Supreme Court Rules. The record on appeal will be limited to:

(1) the memorialized entry of judgment; in multi-party or multi-claim cases the judgment or dismissal order must *either* (1) dispose of all claims and all parties or (2) entirely dispose of at least one claim or one party *and* contain the express determination that there is no just reason for delay with the express direction by the trial judge that judgment be filed. See 12 O.S. Section 994.

(2) pleadings proper as defined by 12 O.S. Section 2007(A);

(3) applicable instruments on file, including the motion and response with supporting briefs and materials filed by the parties as prescribed by subsections (a) and (b);

(4) any other item on file which, according to some recitation in the trial court's written journal entry or in some other order, was considered in its decision;

(5) any other order dismissing the claim or determining the issues as to some but not all parties or claims;

(6) any transcripts of the hearing on the motion;

(7) any motions, along with supporting and responsive briefs, for a new trial (re-examination) of summary judgment or appealable summary disposition process.

[Withdrawn and replaced effective November 1, 1984; amended June 29, 1993; amended effective September 16, 2002.]

OKLAHOMA SUPREME COURT RULES

Effective January 1, 1997
Including Amendments Received
Through November 1, 2004
O.S. Title 12, Chapter 15, Appendix.

Rule 1.36 ACCELERATED PROCEDURE FOR SUMMARY JUDGMENTS AND CERTAIN DISMISSALS

(a) Cases Applied. The Rule 1.36 accelerated procedure will govern appeals from:

1. summary judgments in cases in which the motions were filed under District Court Rule 13 after October 1, 1993; and

2. final orders in cases in which motions to dismiss for failure to state a claim or lack of jurisdiction (of a person or subject matter) under District Court Rule 4 were filed after October 1, 1993.

In multi-party or multi-claim cases the summary judgment or dismissal order must either (1) dispose of all claims and all parties or (2) entirely dispose of at least one claim or one party and contain the express determination that there is no just reason for delay with the express direction by the trial

judge that judgment be filed. See 12 O.S.Supp. 1995 Section 994.

(b) Commencement of Appeal. Appeals in these cases will be commenced by filing a petition in error with a certified copy of dismissal order or of summary judgment and, where applicable, a certified copy of the order denying new trial, with payment of costs or an affidavit *in forma pauperis.* The petition in error must comply with all Rules to the extent they are consistent with Rule 1.36. The record shall be filed at the same time as the petition in error. Rule 1.36(d).

(c) Record on Appeal. The record on appeal will stand limited to:

(A) In appeals from summary judgment:

(1) the memorialized order by which summary judgment was entered;

(2) pleadings proper as defined by 12 O.S.1991 Section 2007(A), (petition, answer, etc.);

(3) applicable instruments on file, including the motion and response with supporting briefs and attached materials filed by the parties as required by District Court Rules 13(a) and 13(b);

(4) any other item on file which, according to some recitation in the trial court's journal entry or in some other order, was considered in the decisional process;

(5) any other order dismissing some but not all parties or claims;

(6) any transcripts of proceedings on the motion(s);

(7) any motions, along with supporting and responsive briefs, for a new trial (re-examination) of the summary judgment process;

(8) the appearance docket; and

(9) a cover page and Index of the record prepared by the party.

(B) In appeals from final orders on motions to dismiss:

(1) the memorialized order of dismissal;

(2) pleadings proper as defined by 12 O.S. 1991 Section 2007(A), (petition, answer, etc.);

(3) the instruments upon which the dismissal is rested;

(4) the motion(s) to dismiss and any supporting brief(s);

(5) any responsive brief by the party asserting the claim;

(6) any other item on file which, according to some recitation in the trial court's dismissal order or in some other order, was considered in its decision;

(7) any other order dismissing some but not all parties or claims;

(8) any transcripts of proceedings on the motion;

(9) any motions, along with supporting and responsive briefs, for a new trial (re-examination) of the dismissal order;

(10) the appearance docket;

(11) a cover page and Index of the record prepared by the party.

(d) Record, Filing, Index, Copies, Transcripts, Costs, Supplement to Record, and Additional Copies on Certiorari. The record shall be filed by appellant as a separate document, not attached to petition in error. The record shall be titled "Record on Accelerated Appeal" and shall be preceded by a separate page containing signature of counsel (or pro se parties) and a certificate of service, followed by an "Index to Contents of Record." The index shall use numerical references which shall correspond to tabs for each of the documents or transcripts included in the record. The record shall consist of copies of instruments authorized by Rule 1.36(c), selected for inclusion by the appellant. To the front of the original and each of the copies of the record there shall be appended the court clerk's certificate identifying each of the included instruments as a true and correct copy of the original on file in the court clerk's office.

An original and four (4) copies of the record and certificate of the clerk shall be filed. One copy shall be served on every other party to the appeal unless waived, and any such waiver must be reflected on the certificate of service.

An appellant who is an inmate, as defined by the provisions of 57 O.S. Section 566 (B)(2), lawyerless and unable to produce the record required by this subsection, may attach to the petition in error an affidavit that discloses his (or her) prisoner status

and sets out a designation of record to be assembled for the appeal. When such affidavit is filed, the Supreme Court's clerk shall order from the trial court's clerk the original record which is to be compiled in accordance with the inmate's designation in the text of his (or her) affidavit. If the appealing inmate's pauper's affidavit is on file in this court, the record shall be prepared and transmitted to this court -- without payment of costs -- within thirty (30) days of the date the inmate's affidavit (with designation of record) is transmitted to the trial court by this court's clerk.

It shall be the appellant's duty to order transcripts from the court reporter and to pay costs to ensure timely completion of transcripts. If the transcripts are not filed with the petition in error because of delay in transcription, no more than one 30-day extension of time to complete transcripts will be granted by the court for good cause shown.

If the appellee desires to include documents or transcripts not included by the appellant in the record on appeal, the appellee shall order any such transcript and file a separate document titled "Supplement to Record on Accelerated Appeal," attaching any instruments or transcripts in the same form and manner as required for an appellant under Rule 1.36 herein. Any such supplement to the record shall be filed concurrently with the Response to the petition in error. The cost of transcribing

appellee-ordered portion of the record will be borne by the appellant unless: (1) The trial judge finds that the portion supports a counter or cross-appeal. or (2) The trial judge directs otherwise for good cause shown. In the latter event the appellee shall pay the transcription fee.

In the event that any party files a petition for writ of certiorari to review a Court of Civil Appeals decision under this accelerated procedure, the Supreme Court may issue an order requiring the party who filed such petition for writ of certiorari to submit to the Supreme Court Clerk additional copies of the Record on Accelerated Appeal and any Supplement to the Record on Accelerated Appeal.

(e) Response. Response(s) to the petition in error shall be filed within 20 days of the petition in error. If the appellee desires to include documents or transcripts not included by the appellant the appellee shall comply with Rule 1.36(d).

(f) Assignment of Appeal. After a response has been filed or the time for filing has expired, the appeal may be assigned to a division of the Court of Civil Appeals, unless initial screening is incomplete or there are unresolved jurisdictional, procedural or postural defects. Assignment to the Court of Civil Appeals shall be in a manner directed by the Chief Justice, with notice given to the parties.

(g) Appellate Review and Briefs. The appellate court shall confine its review to the record actually presented to the trial court. Unless otherwise

ordered by the appellate court, no briefs will be allowed on review. If briefs are ordered, the appellate court will prescribe a briefing schedule. Motions for leave to submit appellate briefs shall be deemed denied unless affirmatively granted by the court. No briefs shall be tendered by attachment to a motion for leave to brief, and the clerk shall not accept or file an appellate brief without prior leave of the court. A motion for appeal related attorney's fees must be made by motion prior to mandate. See Rule 1.14.

(h) Oral Argument. Appeals may be decided pursuant to this rule with or without argument. If argument is granted and the appellate court should orally announce its decision from the bench, it shall also, as in other cases, hand down a memorandum opinion or order.

(i) Certiorari. Certiorari to review any decision of the Court of Civil Appeals made pursuant to this rule may be sought in the same manner as in any other appeal. The time for filing a petition for certiorari is governed by Rules 1.178, 1.179.

(j) N/A

(k) N/A

(l) N/A

APPENDIX S

OKLAHOMA STATUTES INVOLVED

OKLAHOMA STATUTES ANNOTATED

O.S. Title 21 § 461. Larceny or Destruction of Records by Clerk or Officer

Any clerk, register or other officer having the custody of any record, maps or book, or of any paper or proceeding of any court of justice, filed or deposited in any public office, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying or unlawfully removing or secreting such record, map, book, paper or proceeding, or who permits any other person so to do, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding five (5) years, and in addition thereto, such person shall forfeit office.

R.I. 1910 § 2207; Laws 1997, c. 133, § 201, eff. July 1, 1999; Laws 1999, 1st Ex. Sess., c. 5, § 112, eff. July 1, 1999.

O.S. Title 21 § 463. Offering Forged or False Instruments for Record

Any person who knowingly procures or offers

any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, shall be guilty of a felony.

R.L. 1910, S 2209; Laws 1997, c. 133 S 203, eff. July 1, 1999.[1]

1

Notes of Decisions

1. In General: It is immaterial how instrument was forged or whether defendant forged it or not. The question is, did defendant present the forged instrument for record? Fowler v. State, Okla. Crim. App., 20 Okla. Crim 410, 203 P. 900 (1922).

2. Evidence: In prosecution under this section, proof of ways, means, and circumstances of uttering a false or forged instrument was sufficient, and not at variance with the allegations. Fowler v. State, Okla. Crim. App., 20 Okla. Crim. 410, 203 P. 900 (1922).

O.S. Title 21 Section 1585. Forging process of court or title to property, etc.

Every person who, with intent to defraud, falsely marks, alters, forges or counterfeits:

1. Any instrument in writing, being or purporting to be any process issued by any competent court, magistrate, or officer of being or purporting to be any pleading, proceeding, bond or undertaking filed or entered in any court, or being or purporting to be any license or authority authorized by any statute; or,

2. Any instrument of writing, being or purporting to be the act of another by which any pecuniary demand or obligation is, or purports to be created, increased, discharged or diminished or by which any rights or property whatever, are, or purported to be, transferred, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false marking, altering, forging or counterfeiting, any person may be guilty of a forgery in the second degree.

R.L. 1910, Section 2637.

13, 14, 15, 16, 17, 18, 19

13 Notes on Decisions

"Forgery" is an attempt to defraud a person of his property, whether real or personal, by the making of a false or fraudulent written instrument of title, or a false evidence of indebtedness and the like. State vs. McCray, Okla. Crim. App. 316; 176 P. 418 (1918)

14. It is not essential that the document forged be deceptive on its face, but it is sufficient that it is or purports to be another's act, by which any interest in realty is or purports to be transferred. McDonald v. State, Okla. Crim. App., 12 Okla. Crim. 144; 152 P. 610 (1915).

15. Any instrument required to evidence a relinquishment of a right of property may be the subject of forgery. Coleman v. Territory, Okla., 5 Okla. 201, 47 P. 1079 (1897).

16. In prosecution for forgery in the second degree, proof concerning accused's alleged guilty knowledge and intent to defraud could be made by circumstantial, as well as by direct testimony. Smith v. State, Okl. Cr. App., 291 P.2d 378 (1956); Taylor v. State, 65 Okla Crim. 432, 88 P.2d 665 (1939).

17. Where there is a present intent to defraud, the crime of forgery is complete, whether the expected advantage is to accrue from it to the defendant personally, or to another, or whether that purpose is successfully attained or not. Snider v. State, 71 Okla. Crim. 98, 108 P.2d 552 (1941); Boyer v. State, 68 Okla. Crim 220, 97 P.2d 779 (1940).

18. Injury to victim without advantage to defendant is, sufficient to complete second degree forgery. Ausmus v. State, Okla Crim App. 43 Okla. Crim. 66, 277 P. 259 (1929).

19. Repayment as Defense: In prosecution in Oklahoma for crime of forgery, trial court properly held that defendant's intention to repay did not constitute a defense. Acuff v. State, Okla.Crim.App.,283 P.2d 856 (1955).

APPENDIX U

CREDITOR BENEFICIARY CONTRACT

EXERPT FROM:

17B C.J.S. CONTRACTS § 620

A creditor beneficiary is a third party to whom a preexisting duty or liability is owed (Footnote 57). A creditor beneficiary to a contract is one upon whom the promisee intends to confer the benefit of the performance of the contract and thereby discharge an obligation or duty that the promisee owes the beneficiary. (Footnote 58). Thus a person is a creditor beneficiary if no intention to make a gift appears from the terms of the promise, and promisor's performance of the contract discharges some legal duty owed to the beneficiary by the promisee, (Footnote 59), ... While the creditor beneficiary contract embraces the situation in which the relationship between the promisee and the beneficiary is that of debtor and creditor, (Footnote 61) the obligation of the promisee, which the promisor agrees to perform, need not be for the payment of a money debt only. (Footnote 62).

---

57. Ill.-- Hickox v. Bell, 195 Ill. App. 3d 976, 142 Ill. Dec. 392, 552 N.E.2d 1133 (5th Dist. 1990).

58. Mo.-- OFW Corp. v. City of Columbia, 893 S.W.2d 876 (Mo. Ct. App. W.D. 1995).

59. U.S. -- City and Suburban Management Corp. v. First Bank of Richmond, 959 F. Supp. 660 (D. Del. 1997).

61. U.S.-- Donovan Const. Co. v. General Elec. Co., 133 F. Supp. 870 (D. Minn. 1955).

62. Cal.-- In re Marriage of Smith & Maescher, 21 Cal App. 4th 100 26 Cal. Rptr. 2d 133 (4th Dist. 1993).

APPENDIX V

This Affidivit was presented in conjunction with the hearing on the Recusal of Judge Franklin held before the Honorable Ray Dean Linder on January 13, 2005 in Blaine County , Oklahoma. It also appears as an exhibit in Plaintiff's Petition for a Writ of Mnadamus filed in the Oklahoma Supreme Court on January 18, 2005, #101,682 . And U.S. Supreme Court Case No. 05-1057.

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff, vs. CONTINENTAL RESOURCES, INC., an Oklahoma Corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc. DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants.	)	Case No. CJ-2002-151

AFFIDAVIT OF JULIA C. RIEMAN

STATE OF OKLAHOMA]
] ss:
COUNTY OF GARFIELD]

I, Julia C. Rieman, of the law firm Gungoll, Jackson, Collins, Box & Devoll, P.C., being of lawful age, and having first been duly sworn upon my oath, state as follows:

1. I am one of the attorneys for the Defendants, Continental Resources, Inc., Harold Hamm, and Tom Luttrell, in the above-captioned case. I have personal knowledge of the matters hereinafter referred to, and I am competent to testify as to these matters.

2. I prepared the notebook for the Court that is referenced in billing records of Gungoll, Jackson, Collins, Box & Devoll, P.C. for this case in an entry dated July 11, 2003.

3. The notebook contained *only* complete copies of cases that had been cited by the parties in the briefing on summary judgment and an index that listed the style and citation of the cases contained in the notebook.

4. I highlighted the language in the cases that had been directly quoted in the briefs and I highlighted the language in the cases that was relied on by me to support the legal argument made

in the briefs, even though not directly quoted. I did *not* provide any personal commentary, editorial notes, or make any additions or deletions to the copies of the cases.

5. I prepared the notebook on a Friday afternoon, July 11, 2003 as an aid to the Court for a hearing set for Wednesday July 16, 2003. Because of the time constraints and the number of cases included in the notebook (it took me two and a half hours to prepare a single copy) I only prepared one copy of the notebook; we did not even have a copy for ourselves.

6. I personally delivered the notebook to Judge Ronald G. Franklin. I told him that it was a notebook of the cases cited in our briefs and aside from "hello" and "goodbye" that was the extent of my conversation with the Judge when I delivered the notebook.

7. The notebook did *not* include some draft order for the Judge to work from, as claimed by the Plaintiff, Mr. Olson. I included *nothing* in the notebook other than the highlighted copies of the cases cited in the briefs and an index that listed the cases.

Further, Affiant sayeth not.

s\ Julia C. Rieman

Subscribed and sworn to before me this 5 th day of January, 2005.

My Commission Expires:

s\ Virginia L. Schultz
NOTARY PUBLIC

Seal Stamp:
Virginia L. Schultz
Garfield County
Notary Public
#02003675
Exp. 3/17/06
In and for State of Oklahoma

/jcr
Mitchie/gad/continental/Olson

APPENDIX W

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff.	)	
-vs-	)	Case No.
CONTINENTAL RESOURCES, INC., HAROLD HAMM, TOM LUTTRELL, DAVIS OPERATING COMPANY, and WILLIAM HENRY DAVIS, Defendants.	)	CJ-2002-151

TRANSCRIPT OF PROCEEDINGS

The Honorable Ronald G. Franklin, District Judge, Presiding, in and for Blaine County, Oklahoma.

July 17, 2003

APPEARANCES:

Plaintiff appears pro se

Mr. Peter Brolick
Barrow, Gaddis, Griffith & Grimm
610 S. Main, Suite 300
Tulsa, OK 74119
For Defendants Davis Operating Co. & William Davis

Mr. Glenn Devoll
Gungoll, Jackson, Collins & Box
323 W. Broadway
Enid, OK 73701
For Defts Continental Resources, Inc., Hamm, & Luttrell

Reported by:

Beth M. Malatin, RPR
Registered Professional Reporter
Garfield County Courthouse
Enid, Oklahoma 73701

Transcript Line [ ] Transcript Page ( )

(2)

[1] THE COURT: This will be Olson vs. Continental [2] Resources, Harold Hamm, Tom Luttrell, Davis Operating [3] Company, and William Davis. There have been -- Why don't we [4] announce our appearances for the record.

[5] MR. DEVOLL: Your Honor, Glenn Devoll on behalf of [6] Continental Resources, Mr. Luttrell, and Mr. Hamm.

[7] MR. BROLICK: Peter Brolick for Davis Operating [8] Company and William H. Davis.

[9] MR. OLSON: Robert Olson pro se.

[10] THE COURT: All right. There are numerous motions [11] pending, including a motion for summary judgment. There is [12] some motions for additional time to respond to some--or to [13] shorten some time on discovery near as I can tell. There is [14] a request by Mr. Olson to continue this matter I think for [15] the purpose of further discovery. I believe that is [16] correct.

[17] MR. OLSON: We are bumping up against the time [18] limits set in the original scheduling order.

[19] THE COURT: Well, what I'm going to deal

with [20] first is the motion for summary judgment which has been [21] filed and which has been responded to and which has been [22] replied to. And the Court has had an opportunity and has[23] reviewed all those materials. And I want to approach it [24] in this manner. There are individuals that are named in [25] this and I must tell you that I must deal with what is in

(3)

[1] the motion for summary judgment and response. I cannot go outside of the record for the purpose of ruling on this. [3] And as you all are aware that requires evidentiary proof to [4] be attached and part of both the motion for summary judgment [5] and the reply. And based on that I will find that the Court [6] has found or will find that there is no evidence that any of [7] the individuals acted outside of their corporate capacity as [8] individuals. And as such as to the individuals I am going [9] to sustain the motion for summary judgment because there is [10] just no proof that they have done any admissable proof, that [11] they have done anything else. The Court cannot speculate on [12] what might be found or what could come up. I have to deal [13] with what is in the motions. [14] As to Continental Resources, Mr. Olson's claim is [15] based upon his agreement that he had concerning the lease, [16] and I'm not going to -- the '84 lease or the -- whichever [17] lease, the '84 lease I believe. And your claim is [18] contingent upon that particular claim, and I think

everybody [19] agrees that if that lease would have gone away years ago [20] your rights would have gone away long ago. Everybody agrees [21] to that. And there was a settlement in the partition suit, [22] which basically as a result of that that lease was released. [23] I don't think there is any dispute as to what happened [24] there. Based on the evidence that has been presented in the [25] motions and in the response the Court has no other choice in

(4)

[1] this Court's opinion than to sustain that motion because [2] there is no evidence of anything other than a business [3] transaction that was performed by the companies in that [4] respect. So I am going to grant both motions for summary [5] or the motion for summary for all the parties and [6] render judgment accordingly. And I will grant you an [7] exception, Mr. Olson.

[8] MR. OLSON: Will the record, transcript of the [8] record be available ?

[10] THE COURT: Certainly. It's available for [11] purchase by any of you.

[12] MR. OLSON: Okay. And will you also include a [13] statement as to your reasoning as to --

[14] THE COURT: I have included that in my ruling. [15] Yes ?

[16] MR. DEVOLL: That was my question, Judge. Is the [17] Court going to issue an order ?

[18] THE COURT: I'll issue a written order.

[19] MR. BROLICK: Your Honor, we also, Davis

Operating [20] company also had a motion for summary judgment on a payment [21] that was made for about $7,000. If those leases were not [22] valid when we made that payment we would ask that we be [23] granted summary judgment on that motion too

[24] THE COURT: That's payments that you made --

[25] MR. BROLICK: After.

(5)

[1] THE COURT: After the fact.

[2] MR. BROLICK: Yes, Your Honor.

[3] THE COURT: I'm going to reserve ruling on that [4] particular motion until I have an opportunity to look at it. [5] I quite frankly wasn't concentrating on that. I need to go [6] back and look at that. Now what I will do I will give you [7] each an opportunity to provide me a proposed order including [8] findings of fact. I think that is what you are asking for.

[9] MR. OLSON: Yes,sir.

[10] THE COURT: And I'll give you each ten days, each [11] of you, to present to me proposed findings of fact and [12] conclusions of law for purpose of -- I will write my [13] own order however.

[14] MR. DEVOLL: Your Honor, I believe based on the [15] Court's ruling the balance of the motions that are [16] pending --

[17] THE COURT: Are moot. That would be correct. And [18] I'll give you a written, all parties on that particular one. [19] I apologize for not

covering it.

[20] MR. BROLICK: It was a small part of the whole [21] thing I understand. [22] May we be excused ?

[23] THE COURT: You may be excused.

[24] MR. DEVOLL: Thank you, Your Honor.

[25]

* * * * *

Certified by
s/ Beth Malatin

Beth M. Malatin, RPR
Registered Professional Reporter

APPENDIX X

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff,	)	Case No.
-vs-	)	
Continental Resources, Inc. (et al. {correction by Olson}) Defendant (s).	)	CJ-02-151

TRANSCRIPT OF PROCEEDINGS

June 17, 2004

The Honorable Ronald G. Franklin, District Judge, Presiding, in and for Blaine County, Oklahoma.

APPEARANCES:

Plaintiff appears pro se

Mr. Glenn Devoll
Gungoll, Jackson, Collins & Box
P.O. Box 1549
Enid Oklahoma 73701
For Continental Resources

Mr. Robert Sartin
Barrow & Grimm
610 S. Main, Suite 300
Tulsa, Oklahoma 74119
For Davis Operating Company

Reported by:

Beth M. Malatin, RPR
Registered Professional Reporter
Garfield County Courthouse
Enid, Oklahoma 73701

Transcript Line [ ] Transcript page ( )

(2)

[1] THE COURT: CJ-2002-151 Olson v. Continental. Who [2] wants to go first ?

[3] MR.DEVOLL: I'd be happy to.

[4] THE COURT: All right.

[5] MR. DEVOLL: As the Court is well aware this case [6] is now over. We filed both an application for pre-appeal [7] attorney fees and costs as well as appeal related attorney [8] fees and costs. The amounts were set out in the [9] applications, but for the Court's benefit and for work that [10] we had done prior to the appeal we had incurred fees of [11] $31,616.25 and costs of $160.63 which makes a pre-appeal [12] total of $31,776.88. Our appeal related fees or costs were [13] 49,415. Bringing the absolute total to $41,191,88.

[14] I filed an affidavit in the case, Your Honor. I have [15] reviewed our time records. The rate charged for both [16] attorneys working on the case was $175 an hour which we [17] believe is a reasonable fee, hourly rate in the community [18]

which we work for the type of work that we have done. This [19] is, the Court knows, a somewhat specialized area, oil and [20] gas field. That's our normal hourly rate. As I say I think [21] that's comparable to other attorneys' rate that work in this [22] field in the local community. We are going to stand -- [23] Before I do that, no, I wanted to say one thing to the Court [24] and that is to some degree part of the work that we did was [25] generated or caused as a result of Mr. Olson's somewhat

(3)

[1] unorthodox pleadings that were filed in this case and his [2] actions, which I know is somewhat typical in a pro se case, [3] but nonetheless it required us to respond and to that degree [4] the time expended was somewhat unusual. But it was [5] generated by reason of the fact that Mr. Olson's pleadings [6] were of somewhat unorthodox nature. so we will stand on [7] our affidavit as the evidence in support of our attorney [8] fees request and we would ask the Court to award us, [9] Continental and Mr. Hamm, $41,191.88.

[10] THE COURT: All right. Why don't we just go ahead [11] and let you make your presentation. We'll let Mr. Olson go [12] last and make any inquiry of either one of you.

[13] MR. SARTIN: Thank you.

[14] Your Honor, Robert Sartin here representing the [15] Defendants Davis Operating Company and

William H. Davis. We [16] also filed our amended application on April 12th, 2004 [17] seeking attorney fees. Similar to Continental we have [18] pre-appeal attorney fees and costs and then we also have [19] post appeal attorney fees and costs. I will advise the [20] Court the Supreme Court has entered an order awarding us [21] appeal related attorney fees. Pre-appeal we had attorneys [22] fees totaling $19, 192.50. Pre-appeal we had expenses [23] totaling $111.66 and pre-appeal we had costs totalling [24] $540.77. For a total of $19,844.93. Post appeal or during [25] the appeal we had attorneys fees totaling $9,694. We had

(4)

[1] expenses totaling $196.52. We had costs totaling $414.65. [2] The post appeal or the post summary judgment total is [3] $10,305.17, which makes our total request $30,150.10. [4] Pre-appeal the attorneys rates, there were two different [5] attorneys that worked on the case. One was an associate [6] with our firm, about a third of his time was at $150 an [7] hour. He had been practicing law at that time about five [8] years. About two thirds of his time was $160 an hour. He [9] had been practicing law about six or seven years at that [10] time. The other time which is actually fairly minimal was [11] spent by me. When the case started my rate was $185 an hour [12] and then some of my time was $195 per hour. I have been [13]

practicing sixteen years. I believe those rates to be [14] standard in the community. I believe those to be fair rates [15] based on the expertise involved, the various factors that [16] would be present under Burk. [17] With regard to the appellate attorneys fees those were [18] done by basically two different attorneys, again myself I [19] have about half the time at my rate of $195; another [20] associate with the firm spent probably the other half of the [21] time and he is actually in his second year, his rate was [22] $125 for part of the appeal, and when he was in his first [23] year of practice the rate was $85 an hour. Again I would [24] represent to the Court that I believe those are fair rates [25] for an attorney of his experience in the community and those

(5)

[1] types of things. I would also testify that I believe on the [2] whole the time spent and the costs incurred were fair and [3] reasonable. I'll join Mr. Devoll in my testimony concerning [4] the unusualness of this case. It has been going on for a [5] long, long time. We similarly were forced to respond to a [6] number of different pleadings and they were quite unusual, [7] but we did so and like I say the time was reasonable. Thank [8] you.
[9] THE COURT: I'll note that each of you as [10] attorneys are considered to be under oath here for these [11] testimonies.

[12] Mr. Olson, do you care to give any testimony or make [13] any statement ?

[14] MR. OLSON: Well, I think both of these costs are [15] excessive, especially Continental Resources costs if you [16] compare it with the costs of the other attorneys. Other [17] that that there is not a whole lot I can say.

[18] THE COURT: Do you have any other evidence you [19] wish to present other that make the statement that you're [20] making ?

[21] MR. OLSON: No, sir.

[22] THE COURT: All right. The Court will take this [23] under advisement. I'm going to hold it until such time as [24] we do or do not get a mandate, then depending on, assuming [25] the mandate comes down I will enter an order that

(6)

[1] If the mandate, if they decide to rehear it or make some different decision we'll go from there. Okay. Now inasmuch [3] as you're here today on the asset hearing which has been [4] requested I would ask you to raise your right hand.[5] (Robert Olson sworn at this time.)

[6] THE COURT: I would ask that you adjourn perhaps [7] to the jury room if they are through and proceed.

[8] MR SARTIN: Your Honor, what we'll do is when we [9] finish we will come back and see you and address any issues [10] that we need.

[11] THE COURT: Okay. I will probably be back [12] downstairs by then.
[13] MR. OLSON: I have got one request. On [14] Continental Resources request for attorneys fees there was a [15] notation for a notebook that they made for you citing cites. [16] Would you be kind enough to give me a copy of that notebook ?
[17] THE COURT: Quite frankly I don't have that [18]
anymore. Since the matter is over with I don't retain those [19] things.
[20] MR. OLSON: Do you have a copy of that notebook ?
[21] MR. DEVOLL: We might. We are going paperless. [22] That's why I'm hesitating. I don't know if I have got a [23] copy, a hard copy of it any longer. We're destroying files [24] and scanning them in as we go so that's the reason. If I do [25] I mean --

(7)

[1] MR. OLSON: A printout would work. If you have [2] scanned it in your files there is always a printout.
[3] MR DEVOLL: We might work it out. That will take [4] time.
[5] THE COURT: I'm sure there would be some costs [6] involved.
[7] MR DEVOLL: yeah, there would be.
[8] THE COURT: You may be excused.

* * * * *

APPENDIX Y

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff, vs CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, an individual and Vice President of Continental Resources, Inc., And DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants	)	Case No. CJ-2002-151

* * * *

EXERPTS FROM TRANSCRIPT OF HEARING ON PLAINTIFF'S MOTION FOR RECUSAL OF JUDGE RONALD G. FRANKLIN

HELD ON JANUARY 13TH, 2005
BEFORE THE HONORABLE RAY DEAN
LINDER, PRESIDING JUDGE OF THE
FOURTH JUDICIAL DISTRICT

* * * *

REPORTED BY

Mark W. Fike, C.S.R.
Official Court Reporter
1600 Main Street, Suite 7
Woodward, Oklahoma 73801
(580) 256 - 3405

APPEARANCES

Mr. Robert Olson
9022 E 60th Street
Tulsa, Oklahoma 74145
(918) 252 1987
Appearing Pro Se

* * * *

Mr. Glenn A. Devoll
Ms. Julia C. Rieman
- Of the Firm -
Gungoll, Jackson, Collins, Box & Devoll, P.C.
323 West Broadway Avenue
P.O. Box 1549
Enid, Oklahoma 73702 - 1549
(580) 234 0436
Attorneys for Defendant Continental Resources

CONTENTS

	Page
Appearances. . . .	2
PLAINTIFF'S MOTION FOR RECUSAL:	
Argument by Mr. Olson . . .	4
Response by Mr. Devoll . .	46
Further argument by Mr. Olson .	48
COURT'S RULING . . .	49
Certificate of Court Reporter . .	53

(3)

* * * *

PROCEEDINGS

* * * *

Line [ ] Page ( )

[4] THE COURT: There are two matters that I think [5] will come on for consideration today : CJ-2002-151 and [6] CJ-2004-121. These are inter-related matters, it appears to [7] me. And there is for consideration at this time the motion [8] to disqualify the previously assigned and presiding judge in [9] this matter, to wit : Judge Franklin. That's the issue with [10] which we're going to deal.

[11] The plaintiff present and ready to proceed on that [12] basis.

[13] MR. OLSON: Yes, sir.

[14] THE COURT: Defendants present by

counsel and [15] ready as well ?
[16] MR. DEVOLL: Yes, sir.
[17] THE COURT: Mr. Olson, we've not met. It's my [18] understanding that you are Robert Olson. You are not an [19] attorney at law. You have chosen in the past, and choose [20] again today, to proceed pro se; is that correct ?
[21] MR. OLSON: That is correct, sir.
[22] THE COURT: You understand that this is a serious [23] matter. We're in the district court. we are making a formal [24] record. We're going to deal with not only district court [25] matters, we're going to deal with matters from the Court of

(4)

[1] Civil Appeals, we're going to deal with matters from the [2] Supreme Court of the State of Oklahoma. Is that correct ?
[3] MR. OLSON: Yes, sir.
[4] THE COURT: I see as well by some of your filings [5] that you have indicated you may seek relief in the Supreme [6] Court of the United States. You need to be aware of the fact [7] this is a court of law. The court expects everyone who [8] appears here to know the rules, to abide by the rules and to [9] proceed professionally. Understood ?
[10] MR. OLSON: Yes, sir.

[3] THE COURT: If the file shows that that's what [4] the order says, it would be correct, would it not ?

[5] MR OLSON: Yes.

[6] THE COURT: Have you looked at the file ?

[7] MR. OLSON: Uh --

[8] THE COURT: The court file contained here in the [9] Blaine County courthouse.

[10] MR. OLSON: No, sir.

[11] THE COURT: You've had access to it if you wanted [12] it, have you not, or have you --

[13] MR. OLSON: Yes.

[14] THE COURT: -- been denied access to it ?

[15] MR. OLSON: I haven't been denied access to it.

[16] THE COURT: All right, sir. It's available to [17] you at any time ?

[18] MR. OLSON: Yes.

[19] THE COURT: And if that file contains that order [20] signed by the chief justice, Justice Watt, that certiorari [21] was denied, that, too, would be correct, right ?

[22] MR. OLSON: Yes, sir.

[23] THE COURT: All right, sir. I don't need any [24] real background on the facts of the case. I need for you to [25] explain to me why Judge Franklin should be recused when the

[23] MR. OLSON: Then you said that I can make [24] whatever record I wish to make ?
[25] THE COURT: I'm going to allow that. And if I

(9)

[1] think that it strays so far from the norm or so far from the [2] accepted practice, there may or may not be an objection, or I [3] may sua sponte say, That's it. But yes, sir, I'm going to [4] give you as much rein as you think you need reasonably to [5] proceed here today. All right, sir ?
[6] MR. OLSON: Okay, sir. Then I would like to [7] present a summary of the case.
[8] THE COURT: Have you not done that in one of [9] these filings I've just been reading for the last hour or so ? [10] And also previously you had submitted to me by mail at least [11] three or four hundred pages of information. So I've read [12] what you've done in the past. Is this a new production by [13] you ?
[14] MR. OLSON: No, sir. It's one that's been [15] included.
[16] THE COURT: All right, sir. I'm going to tell [17] you that I'm cognizant of everything that's in this file.
[18] MR. OLSON: Okay. Then you are cognizant of the [19] case law history of --

what Garfield County has to do with this [22] particular case. We're in the District Court of Blaine [23] County, aren't we ?

[24] MR. OLSON: That's the reason I think the [25] district judge in Blaine County should have heard the case

(23)

[1] and not the district judge from Garfield County.

[2] THE COURT: Well, first of all, there isn't, [3] quote, a district judge of Blaine County unless you consider [4] Judge Franklin, because he is the chief judge of Blaine [5] County by my assignment. I happen to be the presiding [6] district judge in 18 counties, and I have assigned him as the [7] chief judge. There is not a physically resident district [8] judge in Blaine County. There is an associate district [9] judge.

[10] MR. OLSON: Okay.

[11] THE COURT: But the fact that Judge Franklin [12] resides, you say, in Garfield County, how does that have [13] significance in this case in Blaine County ?

[14] MR. OLSON: Because he came from Garfield County [15] where the defendant, Continental Resources, is located, and [16] came here to try the case, and I asked him to recuse, and he [17] said, no, he's keeping it.

[19] MR. OLSON: Six
[20] THE COURT: And how many case files, case [21] summaries, would you suppose you've looked at in the time [22] that you have been doing this pro se litigating ?
[23] MR. OLSON: Case summaries --
[24] THE COURT: No. Case files, files that would [25] contain such instruments as what you've just referred to that

(29)

[1] -- the claim for attorney's fees with the accompanying data [2] given under oath by the submitting attorney. How many of [3] those have you seen ?
[4] MR. OLSON: Probably four.
[5] THE COURT: Mm-hmm. Would it surprise you that [6] I've been seeing things like that for over 35 years ?
[7] MR. OLSON: No, sir.
[8] THE COURT: That I have seen thousands -- [9] thousands -- of similar summaries, and would it surprise you [10] that you're the first person that I'm aware of that has ever [11] raised that as an improper communication by and between the [12] attorneys and the judge ? It's done as -- it's commonplace. [13] It' done in almost every case in which there is a contested

[14] issue as to the amount of attorney's fees that are due and [15] owing. Would that surprise you at all ?

[16] MR. OLSON: We're not talking about the amount of [17] attorney's fees. We're talking about the amount of [18] communication, your Honor.

[19] THE COURT: Yes, sir. And as I see your [20] pleadings, you object more than anything else to the fact [21] that a summary or an index, an index with case citations, was [22] furnished and that a proposed order was furnished. Aren't [23] those two of your main objections ? That's the communication [24] that really has gotten under your saddle ?

[25] MR. OLSON: Yes, your Honor.

(30)

[1] THE COURT: Were you not requested to provide a [2] proposed finding of fact and conclusions of law yourself at [3] the end of the summary judgment ?

[4] MR. OLSON: Yes. And we each provided that and [5] each provided it to the other party.

[6] THE COURT: But the fact that they did so to the [7] judge is a violation of some sort of professional rules ? Is [8] that what you are telling me ?

[9] MR. OLSON: Your Honor.
[10] THE COURT: Why, if you provided such a proposed [11] order, are you not in violation of the same restriction ?
[12] MR. OLSON: You're -- you're mixing concepts, [13] your Honor.
[14] THE COURT: Oh. Oh. So a proposed order from [15] the plaintiff is different than a proposed --
[16] MR. OLSON: No.
[17] THE COURT" -- order --
[18] MR. OLSON: No.
[19] THE COURT: -- from the defendants ?
[20] MR. OLSON: No, your Honor. We were each ordered [21] to provide our potential order and find- -- or finding of [22] facts.
[23] THE COURT: Right.
[24] MR. OLSON: We each did that, and each provided [25] it to the other party. Then they provided an additional

(31)

[1] notebook to the judge that was highlighted with their cases.
[2] THE COURT: And you were denied the opportunity [3] to do that ?
[4] MR. OLSON: Yes, sir.
[5] THE COURT: You were -- he told you,

don't bring [6] me a notebook ?
[7] MR. OLSON: No, he didn't say that.
[8] THE COURT: Don't bring me a highlighted
[9] instrument ? You know, you've sent me three
or four hundred [10] pages of highlighted materials.
[11] MR. OLSON: And I sent that to everybody.
I [12] didn't send it just to you.
[13] THE COURT: So how is it so egregious
that they [14] provided the citations of cases
actually presented in open [15] court on the record
and they provided an index of those same [16]
cases presented in open court on the record ?
[17] MR. OLSON: Highlighted with the words
they used [18] in their briefs.
[19] THE COURT: Did they "X" out or did they
in any [20] way exclude materials that would have
been beneficial to you ? [21] Do you know ? Did
they do that ?
[22] MR. OLSON: I don't know if they did or
not, your [23] Honor. There was only one copy
of that made, and it was [24] given to Judge
Franklin and he threw it away.
[25] THE COURT: So what import did it have ?

[1] MR. OLSON: He threw it away after the
case, your [2] Honor, not before.
[3] THE COURT: Have you read Ms. Rieman's

affidavit [4] about how she prepared that and what she did with it ?

[5] MR. OLSON: Yes, I have, your Honor. And it -- [6] and it bothered me. Why would an attorney spend two and a [7] half hours making that notebook if they didn't expect to get [8] a return on that time investment ?

[9] THE COURT: Do you suppose it has anything to do [10] with her being a conscientious representative/advocate for [11] her client ? Do you suppose it has anything to do with that; [12] that she thought that was part of the job she was supposed to [13] do to represent her client ?

[14] MR. OLSON: If it was the job she was supposed to [15] do, your Honor, she should have provided that to everybody, [16] not just the one copy to the judge.

[17] THE COURT: Was that kept secret from you, the [18] fact that he had that notebook ? Did he --

[19] MR. OLSON: It was not revealed to me. It was [20] not revealed to me, and it was not revealed that I had an [21] opportunity to also send him a notebook with my case files [22] highlighted to support my arguments.

[23] THE COURT: And in the six cases in which you've [24] been directly involved, have

you ever seen such an instrument [25] before any attorney, an aid to the court such as that ?

(33)

[1] Have you ever seen one of those before ?

[2] MR. OLSON: No.

[3] THE COURT: If I told you I've seen a thousand of [4] them, do you think I would be exaggerating ?

[5] MR. OLSON: I have no idea.

[6] THE COURT: Mm-hmm.

[7] MR. OLSON: But I think you should question those [8] things when they are provided. Those are --

[9] THE COURT: Maybe if you took a course in trial [10] practice you'd find out about things like that, Mr. Olson, [11] and know that it is commonplace and appreciated usually by [12] judges. Not always. Sometimes they're -- they may be [13] extraneous.

[14] MR. OLSON: Does that persuade the judge or make [15] the judge somewhat more --

[16] THE COURT: Absolutely not. It just makes it a [17] little easier to collect your thoughts when you get ready to [18] draft your order.

[19] MR. OLSON: Then why does the judge not ask [20] people to do that ?

[21] THE COURT: Sometimes judges do ask

Sometimes [22] it's done just as common practice within certain districts; [23] It's just an understood thing that it will happen. No [24] preclusion. Maybe a person needs to do a little [25] investigation about the history of various judicial districts

(34)

[1] before he or she attempts to practice in those various [2] districts.

[3] Can we get on with the issue of disqualification of [4] Judge Franklin ?

[5] MR. OLSON: Well, your Honor, there is no doubt [6] that they have talked to the judge. there is no doubt --

[7] THE COURT: Who is "they" ?

[8] MR. OLSON: The opposing attorneys have talked to [9] the judge.

[10] THE COURT: And who are those attorneys, for the [11] record. The record doesn't have eyes; it can't see as you [12] wave your hand.

[13] MR. OLSON: Julia Rieman and Glenn Devoll.

[14] THE COURT: Okay. And they talked with the judge [15] outside your presence ?

[16] MR. OLSON: Yes, sir.

[17] THE COURT: And they talked about the merits of [18] the case ?

[17] THE COURT: -- told you how much time they'd [18] spent on each of these issues; is that right ?

[19] MR. OLSON: That's correct, sir.

[20] THE COURT: And then you made your own [21] interpretation. And if there was -- you said 1.75. If there [22] was 1.75 hours, you don't know how that time was divided, do you ?

[24] MR. OLSON: No, sir.

[25] THE COURT: Okay. All right, sir. Go ahead.

(37)

[1] MR. OLSON: Well, this notebook -- spent two and [2] a half hours preparing this notebook -- was provided to Judge [3] Franklin on July the 11th. The hearing was on July 17th. [14] Now, when we came to the hearing, Mr. Devoll -- I met him [5] out front before. He gave me a nice smile and asked me if I [6] spent a lot of time preparing for this -- for the hearing. [7] When we got in there, there was no oral argument on the [8] hearing, and Mr. Devoll just put a pile of stuff on the desk [9] and didn't prepare for any argument whatsoever. That smile [10] told me he knew what the verdict was going to be already.

[11] THE COURT: Now, you're a geologist, not a psychologist or a psychiatrist, are you Mr.

[22] I think that the affidavit of Ms. Rieman -- and that's [23] why she's here, should the Court have any questions -- speaks [24] for itself in relation to the notebook. We do that as a [25] matter of course -- the judge knows that; the Court knows

(47)

[1] that -- as an aid to the court and a courtesy to the court.

[2] We have been fighting these motions in these two cases [3] for some time. Mr. Olson has lost the case, seems not to be [4] able to accept that result, and has struck out, in my view, [5] unjustifiably against an officer of the court, Judge [6] Franklin, in a very false and malicious way. And for that [7] aspect of his actions, I regret that, but I understand his [8] animosity towards us as opposing counsel.

[9] I'll hold any other comments that I may have but would [10] like to make, and ask that the Court leave Judge Franklin as [11] the judge on this case, and that his orders continue in [12] effect that he's already made in this matter which partially [13] relate to Mr. Olson bringing any other actions or filing any [14] other pleadings in these cases so we can finally get rid of [15] this case and move on. He continues to cost not just

still [12] shows that there is continuing communication with Judge [13] Franklin. The fact that only one copy of that notebook was [14] made, that it was highlighted with -- for their cases, their [15] arguments, is significant.

[16] My brother has a friend who's a retired Texas Supreme [17] Court Justice --

[18] THE COURT: Admitted to practice in Oklahoma ?

[19] MR. OLSON: I have no idea.

[20] THE COURT: Knows anything about the facts of [21] this case ?

[22] MR. OLSON: No, sir.

[23] THE COURT: All right, sir. What relevance does [24] it have ?

[25] MR. OLSON: His opinion is that the attorneys and

(49)

[1] the judge have been talking.

[2] THE COURT: Maybe he should be directly involved [3] in the case; then his opinion would be worth something.

[4] MR. OLSON: Yes, sir. Property has been stolen [5] from me worth about $ 900,000. I think it was stolen from me [6] because I'm acting pro se and they thought they could do it. [7] They owe me a fiduciary duty, they owe me a

[4] noticed that you have the initials Ph.D. after your name and [5] that you are a practicing geologist.

[6] The three years that it takes to complete law school [7] are long and arduous and very productive years. The practice [8] of law for 10 or 15 years by one of these attorneys and for [9] 20 or 25 more years by the other attorney have equal [10] importance, because they understand not only the letter of [11] the law but the niceties of the law and the requirements of [12] the Code of Judicial Conduct and the Rules of Professional [13] Conduct.

[14] Every lawyer that appears in any court is an officer [15] of the court before whom he or she appears. Ms. Rieman has [16] provided a substantial affidavit outlining what she did [17] insofar as this notebook was concerned. And I have told you [18] -- and I don't mean to exaggerate; I might not have seen a [19] thousand such notebooks, but I know that I have seen several [20] hundred of such notebooks because it's very, very [21] commonplace.

[22] I've been a judge for 37 years. I've tried cases in [23] over 30 counties in the state of Oklahoma. The method of [24] practice is very, very important. The rules of practice is [25] very

very important. It's important, too, that people not

[1] find fault simply because they're upset with the results. To [2] accuse a judicial officer, to accuse a practicing attorney, [3] of perpetrating fraud simply because they're upset about the [4] results and have lost a significant amount of income-producing [5] property, while generally accepted by the populous, cannot and [6] will not be accepted by this, and I think other, courts.

[7] If you're going to cast stones about a person's [8] professional integrity, you need to have rock-hard proof. [9] There is some protection, as I said at the outset, when you [10] appear in court. You can make certain allegations in open [11] court that you can't make anyplace else, but they need to be [12] well-founded.

[13] I have listened carefully. I have, I think, done my [14] homework in this case in that I have read probably a couple of [15] thousand pages of materials. I have looked at the court [16] rules. I've applied those rules to this case. You lost in [17] the trial court; the Court of Civil Appeals, with Judge [18] Hansen, one of the most respected judges in Oklahoma in the [19] last 50 years, who wrote the opinion. You've found fault with [20] the ruling made by the Supreme Court of the State

if your schedule [16] would permit you to appear at a hearing on assets within 10 [17] days. That can't even be a veiled threat, in my opinion.
[18] Judge Franklin remains in the case, and that becomes [19] the order of this court.
[20] Thank you, ladies and gentlemen. That will conclude [21] this hearing.
[22] MR. DEVOLL: Thank you, your Honor
[23] (End of Proceedings)

* * * * *

Certified by :

s/ Mark Fike

Certified Shorthand Reporter

APPENDIX Z

ASSIGNMENT OF OVERRIDING ROYALTY

BOOK 442 PAGE 415

KNOW ALL MEN BY THESE PRESENTS:

That Vulcan Energy Corporation, an Oklahoma corporation and Energy Exchange Corporation, A Delaware corporation, hereinafter colled "Assignors" for and in consideration of the sum of ten dollars ($10.00), receipt of which is hereby acknowledged, does assign, sell, transfer, and convey unto Robert W. Olson, hereinafter called "Assignee", an overriding royalty interest of an undivided 1.5% of 8/8ths of all oil, gas, casinghead gas and other liquid hydrocarbons produced, saved and marketed under the terms of those certain oil and gas leases described in Exhibit "A", attached hereto and incorporated herein by reference, and containing 640 acres, more or less, together with the rights incident thereto and the personal property thereon, appurtenant thereto or used in connection therewith.

Said overriding royalty interest shall be free and clear of all development, production, marketing and operating expenses; however, said interest shall bear its proportionate part of all taxes and transportation charges, if any.

In the event any of said leases described in Exhibit "A" cover and apply to less than the entire

fee simple estate in the lands described therein, then the overriding royalty interest herein granted shall be reduced to that portion thereof that the interest of the lessor or lessors bears to the entire fee simple estate. In the event Assignor owns less than the entire interest in any of said leases described above, then the overriding royalty herein granted shall be reduced to that portion thereof that the working interest of assignor in such lease bears to the entire working interest in said leases.

The provisions of the assignment shall be binding upon the successors, representatives and assigns of the Assignor and the Assegnee.

Executed this 28 day of June, 1984, but effective as to the date of first production from the Matli No. 1 well.

Return to: Energy Exchange Corporation
6555 South Lewis Avenue
Tulsa, Oklahoma 74136

Seal: Vulcan Energy
Corporation Corporate,
Oklahoma

Attest: s\ Michael G. O'Kane
Michael G. O'Kane Secretary

VULCAN ENERGY CORPORATION

BY: s\ David Gustine
David Gustine Vice Presedent

Seal: Energy Exchange Corporation
incorporated Delaware, 1981
Attest: s\ Michael G. O'Kane
Michael G. O'Kane Secretary

ENERGY EXCHANGE CORPORATION
BY: s\ David Gustine
David Gustine Vice President

Book 442 Page 416

CORPORATE ACKNOWLEDGEMENT

STATE OF OKLAHOMA)
COUNTY OF TULSA) ss:

On this 28th day of June , 1984, before me the undersigned a notary public in and for the county and state aforesaid, personally appeared David Gustine, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and the free and voluntary act and deed of said corporation, for the use and purpose set forth

Given under my hand and seal the day and year above written.
Notary Public Seal
My Commission Expires: s\ J K Sandven.
April 11, 1987 Notary Public

CORPORATE ACKNOWLEDGEMENT

STATE OF OKLAHOMA)
COUNTY OF TULSA) ss:

On this 28th day of June , 1984, before me the undersigned a notary public in and for the county and state aforesaid, personally appeared David Gustine, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and the free and voluntary act and deed of said corporation, for the use and purpose set forth

Given under my hand and seal the day and year above written.

Notary Public Seal
My Commission Expires:
April 11, 1987

s\ J K Sandven.
Notary Public

EXHIBIT "A"

Book 442 Page 417

WELL NAME : MATLI #1

LESSOR: William M. Gibbons, Trustee of the Property of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY
LESSEE: Vulcan Energy Corporation
DATED: January 12, 1984
FILED: February 9, 1984
RECORDED: Book 432, Page 179
DESCRIPTION: All that part of lessor's right-of-way beginning at Engineers Profile Station 30731+61 and ending 3138+30 located in the NE/4, W/2 of Section 17, Township 16 North, Range 11 West, Blaine County, Oklahoma, containing 15.99 acres, more or less

LESSOR: Julius Lee Matli and Doris R. Matli, husband and wife
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: May 1, 1981
RECORDED: Book 368, Page 447
DESCRIPTION: N/2 NW/4 of Section 17, Township 16 North, Range 11 West and the W/2 NE/4 of section 17, Township 16 North, Range 11 West, LESS railroad right-of-way, AND all that part of

the SW/4 lying South and East of the Enid and Anadarko Railroad Company (now owned by the C.R.I. & P R.R. Co.) over and across the land. Blaine County, Oklahoma.

LESSOR; Lillian Mabel Kershner, a widow
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: February 20, 1981
RECORDED: Book 362, Page 396
DESCRIPTION: All that part of the SW/4 of Section 17, Township 16 North, Range 11 West lying north and west of the Enid and Anadarko railroad. (Now owned by the C.R.I. & P. R.R Co.) Blaine County, Oklahoma

LESSOR: Paul Ariola & Hazel Ariola, Husband and wife
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: February 18, 1981
RECORDED: Book 362 Page 275
DESCRIPTION: A part of the SW/4 of Section 17, Township 16 North, Range 11 West lying North and West of the right-of-way of the Enid and Anadarko Railroad, more particularly described as follows: Beginning 59 & 1/5 rods N. of the SW corner of said quarter section, thence N. 67 & 4/5 rods, thence East 73 & 3/5 rods , to the W. line of said railroad

right-of-way, thence southwesterly along said right-of-way to the place of beginning, containing 15.59 acres, more or less, Blaine County, Oklahoma

EXHIBIT "A"

Book 442 Page 418

LESSOR: Julius Lee Matli & Doris R. Matli, husband and wife
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: February 18, 1981
RECORDED: Book 362 Page 269
DESCRIPTION: SE/4 Section 17, township 16 North, Range 11 West, Blaine County, Oklahoma

LESSOR: Mary A Norcross, a widow
LESSEE: Mac Corporation
DATED: January 13, 1981
FILED: February 18, 1981
RECORDED: Book 362 Page 271
DESCRIPTION: SE/4 Section 17, Township 16 North, Range 11 West, Blaine County, Oklahoma

LESSOR: Betty June Diamond, a single woman
LESSEE: Mac Corporation
DATED: January 12 1981
FILED: May 1, 1981

RECORDED: Book 368 Page 444
DESCRIPTION: E/2 NE/4 of Section 17, Township 16 North, Range 11 West,
Blaine County, Oklahoma

LESSOR: Leland A. Diamond and Charlene Diamond, his wife
LESSEE: Vulcan Energy Corporation
DATED: February 19, 1981
FILED: March 13, 1981
RECORDED: Book 364 Page 354
DESCRIPTION: E/2 NE/4 of Section 17, Township 16 North, Range 11 West,
Blaine County, Oklahoma

LESSOR: Julius C. Matli and Mabel Matli, husband and wife
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: February 18, 1981
RECORDED: Book 362, Page 267
DESCRIPTION: S/2 NW/4 of Section 17, Township 16 North, Range 11 West,
Blaine County, Oklahoma

Seal: County clerk
Watonga - Blaine County, Okla

3519

State of Oklahoma] Fee 8.00
Blaine County] ss
Filed for Record on the
3 day of July A.D. 1984
at 10:10 o'clock AM. and
recorded in book 442 of MSC
at page 415
s\ Bluerig McBev (?) County Clerk
s\Lisa Wilkerocu (?) Deputy

APPENDIX AA

DIVISION ORDER

Davis Operating Company
2800 Mid-Continent Tower
Tulsa, Oklahoma 74103

Date: November 9, 1999
Well Name: Matli #1-17
Division Order : #340355

The undersigned, and each of them certify and warrant that they are the legal owners, in the proportions shown below, or royalty interest and other interest in the proceeds from the sale of all the oil (defined to include condensate) and gas produced from the following described property:

> The Davis Operating Company Matli #1-17 UNIT covering all of Section 17, Township 16 North, Range 11 West, Blaine Co. Oklahoma, limited to production from the wellbore.

1. Effective 7:00 A.M. , September 25, 1999 and until further written notice, you are hereby authorized to give credit as hereinafter shown for all proceeds derived from the sale of oil and gas

from said property subject to the conditions, covenants and directions hereinafter contained.

2. It is understood that the oil and gas produced from the above described land is being sold under contract, and that said contracts, and any amendments, extensions or renewals thereof, shall govern as to the price to be paid for said products and the times when such payments are to be made.

3. Payments may be made by your checks delivered or mailed to the parties thereto entitled at the addresses given. If the average monthly payment to any party hereunder shall be less than $25.00 you may withhold payment, without interest, and in lieu of the scheduled payments make payments at such time there is an amount in excess of $25.00 to the account.

4. In case of any adverse claim of title as to any interest or interests covered hereby, each of the undersigned affected authorizes you to withhold payment, without obligation to pay interest on the amount so withheld, until such adverse claim is finally determined. If suit is filed in any court affecting title to the above land, the production there from or the proceeds derived from the sale of oil, and or gas, then each of the undersigned affected

agrees to indemnify and save you harmless, to the extent only of such party's interest, from any and all liability, loss, cost, damage and expense resulting from such suit.

5. The undersigned agree to notify you of any change of ownership, and no transfer of interest shall be binding upon you until transfer order and the recorded instrument evidencing such transfer or a certified copy thereof, shall be furnished you. You are hereby relieved of any responsibility for determining if and when any of the interests herein above set forth shall or should revert to or be owned by other payments from said interests. The signers hereof whose interests are affected by such money or other payments, if any, agree to give you notice in writing, by registered mail, when any such money or other payments, have been completed or discharged or when any division of interest, other than that set out herein shall, for any reason, become effective, and to execute your transfer orders accordingly, and in the event you do not receive such notice and make any overpayment by reason thereof, you shall be held harmless and hereby are released from any and all liability, damage or loss which might arise there from.

6. Each of the undersigned expressively ratifies and confirms the validity of the oil, gas and

mineral leases and any amendments and supplements thereto, pursuant to which gas is produced from, or allocated to, including all instruments creating, implementing or perpetuating the unit harein described.

7. This division order shall inure to the benefit of not only the parties hereto, but their and your successors and assigns, and this division order shall become valid and binding on each and every owner as soon as signed by such owner, regardless of whether or not all or any of the other owners have so signed.

MATLI # 1-17 UNIT
OK 3021

Credit to	Net Revenue and Type of Interest		
SC0219	Andrea Matli Scoville	.01041666	RI
WR4050	Jennifer Matli Wright	.01041666	RI
MU0101	David H. Murdock, d/b/a Int'l Mining Co.	.00468460	RI
MA0216	Mable Matli, Life Estate	.02025520	RI
MA0217	Micah Lee Matli	.01041667	RI
KE0320	Lillian Mabel Kerschner	.00520830	RI
AR0130	Paul Ariola and Hazel Ariola	.00456740	RI

MA0222	Julius Lee Matli and Doris Matli	.05022140	RI
DI12000	Leland A. Diamond Revocable Living Tr.	.01139500	RI
DI1100	Betty J. Diamond Revokable Living Tr.	.01012890	RI
MA0223	Monte J. Matli, M.D.	.01041667	RI
NO1010	Clemon E. Norcross, Executor *	.02083330	RI
OL0120	Robert Olson	.01500000	ORI
ED0550	Christopher Edwards	.03657103	ORI
BE0302	Rhoda Bernstein, Marstein Investment	.01107518	WI
BO0137	John P. Boswell	.00780000	WI
DA0275	Davis Operating Company	.76059400	WI
		0.81666657	
	TOTAL	1.0000000	

* This is a term interest for a term of 25 years from and after July 1, 1075. This interest is for said 25-year term only and is not extended by production. At the end of said 25-year term, the interest reverts to Julius Lee Matli and Doris R. Matli as joint tenants.

WITNESS / ATTEST	OWNERS:
S\ Mary M. Robles	s\ Robert Olson
2/8/02	9022 E 60th st

Tulsa, Oklahoma
74145

SOCIAL SECURITY OR FEDERAL I.D. #

449-70-7476

S\ Robert Olson

ADDRESS:

9022 E 60th St
Tulsa, Oklahoma 74145

IMPORTANT: Your correct address and Social Security number or tax account MUST be shown

COPY

APPENDIX BB

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANT: CONTINENTAL RESOURCES, INC.

RELIEF SOUGHT: INCREASED WELL DENSITY

LANDS COVERED: SECTION 17, TOWNSHIP 16 NORTH, RANGE 11 WEST, BLAINE COUNTY, OKLAHOMA

CAUSE CD NO. 990002766-T

ORDER NO. 443520

ORDER OF THE COMMISSION

Hearing Date and Place: 8:30 am, on the 24th day of May, 2000, before Curtis Johnson, Administrative Law Judge, at the Eastern Regional Office of the Oklahoma Corporation Commission, Kerr Building, Tulsa, Oklahoma.

Appearances:

David E. Pepper, Attorney, appeared for the Applicant CONTINENTAL RESOURCES, INC.; William H. Huffington, Attorney, appeared for

appeared for DAVIS OPERATING COMPANY; Robert Sartin appeared for Rhoda Bernstein, John Boswell, Leonard Fox and Foxco Energy; and Michael Decker, Deputy General counsel for Conservation filed his notice of appearance on behalf of the Corporation Commission.

Notice and Jurisdiction:

Notice has been given as required and the Commission has jurisdiction of the subject and persons.

Amendment: None

Relief Requested:

Applicant requests that an additional well be permitted for the unit comprised of Section 17-16N-11W, Blaine County, Oklahoma.

Relief Granted:

The requested relief is granted; the well will be for the common source of supply described below and underlying the unit described above, as an exception to the following order:

Common Source of Supply	Order No.
Atoka-Morrow	61449

Reason for Relief:

Analysis of the production in the area indicates that the existing well, the Matli No. 1-17 well, has a sporadic history of production over the last two years. There is a question about whether the well is capable of producing in commercial quantities. In any event, the well is producing from the Atoka-Morrow common source of supply, and therefore it is necessary to obtain density drilling. An engineering analysis indicates that the well has a limited drainage capability, and the proposed location, which is in the NW/4, will encounter a reservoir which should be undrained by the existing well. Therefore, an additional well is necessary to recover gas that would be unrecovered. A volumetric analysis indicates 14 BCF of recoverable gas, and the existing wells will produce a total of 2.1 BCF of gas, leaving 11.9 BCF of gas remaining.

38633628.wpd

APPENDIX CC

BOOK 812 PAGE 676

RELEASE OF OIL AND GAS LEASES

BLAINE COUNTY, OKLAHOMA
FILED
OCT 10 2000
REBEKAH HANEY, CT CLERK
BY No signature
DEPUTY

KNOWN ALL MEN BY THESE PRESENTS:

That, the undersigned, Continental Resources, Inc. P.O. Box 1032, Enid, Ok,73702, does hereby cancel, release, relinquish and surrender to the lessors named on the lease an to their heirs, s successors, assigns and legal representatives of said lessors, all right, title, interest in and to the Oil and Gas lease described as follows on the attached Exhibit "A" hereto attached and made a part thereof .

Executed this 25th day of September, 2000.

CONTINENTAL RESOURCES, INC.
s\ Tom Luttrell
Tom Luttrell, Vice President - Land

STATE OF OKLAHOMA)
) SS:
COUNTY OF GARFIELD)

Before me, the undersigned, a Notary Public, in and for the said county and State, on this 25th Day of September, 2000, personally appeared Tom Luttrell, as Vice President - Land of Continental Resources, Inc., an Oklahoma corporation, on behalf of the Corporation.

My Commission Expires:

April 15, 2004 s\ Lisa Alevert
Notary Public

Seal of the
State of Oklahoma

EXHIBIT "A"

Book 442 Page 417

WELL NAME : MATLI #1

LESSOR: William M. Gibbons, Trustee of the Property of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY
LESSEE: Vulcan Energy Corporation
DATED: January 12, 1984
FILED: February 9, 1984
RECORDED: Book 432, Page 179
DESCRIPTION: All that part of lessor's right-of-way beginning at Engineers Profile Station 30731+61 and ending 3138+30 located in the NE/4, W/2 of Section 17, Township 16 North, Range 11 West, Blaine County, Oklahoma, containing 15.99 acres, more or less

LESSOR: Julius Lee Matli and Doris R. Matli, husband and wife
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: May 1, 1981
RECORDED: Book 368, Page 447
DESCRIPTION: N/2 NW/4 of Section 17, Township 16 North, Range 11 West and the W/2 NE/4 of section 17, Township 16 North, Range 11 West, LESS railroad right-of-way, AND all that part of

the SW/4 lying South and East of the Enid and Anadarko Railroad Company (now owned by the C.R.I. & P R.R. Co.) over and across the land. Blaine County, Oklahoma.

LESSOR; Lillian Mabel Kershner, a widow
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: February 20, 1981
RECORDED: Book 362, Page 396
DESCRIPTION: All that part of the SW/4 of Section 17, Township 16 North, Range 11 West lying north and west of the Enid and Anadarko railroad. (Now owned by the C.R.I. & P. R.R Co.) Blaine County, Oklahoma

LESSOR: Paul Ariola & Hazel Ariola, Husband and wife
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: February 18, 1981
RECORDED: Book 362 Page 275
DESCRIPTION: A part of the SW/4 of Section 17, Township 16 North, Range 11 West lying North and West of the right-of-way of the Enid and Anadarko Railroad, more particularly described as follows: Beginning 59 & 1/5 rods N. of the SW corner of said quarter section, thence N. 67 & 4/5 rods, thence East 73 & 3/5 rods , to the W. line of said railroad

right-of-way, thence southwesterly along said right-of-way to the place of beginning, containing 15.59 acres, more or less, Blaine County, Oklahoma

EXHIBIT "A"

Book 442 Page 418

LESSOR: Julius Lee Matli & Doris R. Matli, husband and wife
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: February 18, 1981
RECORDED: Book 362 Page 269
DESCRIPTION: SE/4 Section 17, township 16 North, Range 11 West, Blaine County, Oklahoma

LESSOR: Mary A Norcross, a widow
LESSEE: Mac Corporation
DATED: January 13, 1981
FILED: February 18, 1981
RECORDED: Book 362 Page 271
DESCRIPTION: SE/4 Section 17, Township 16 North, Range 11 West, Blaine County, Oklahoma

LESSOR: Betty June Diamond, a single woman
LESSEE: Mac Corporation
DATED: January 12 1981
FILED: May 1, 1981

RECORDED: Book 368 Page 444
DESCRIPTION: E/2 NE/4 of Section 17, Township 16 North, Range 11 West,
Blaine County, Oklahoma

LESSOR: Leland A. Diamond and Charlene Diamond, his wife
LESSEE: Vulcan Energy Corporation
DATED: February 19, 1981
FILED: March 13, 1981
RECORDED: Book 364 Page 354
DESCRIPTION: E/2 NE/4 of Section 17, Township 16 North, Range 11 West,
Blaine County, Oklahoma

LESSOR: Julius C. Matli and Mabel Matli, husband and wife
LESSEE: Mac Corporation
DATED: January 12, 1981
FILED: February 18, 1981
RECORDED: Book 362, Page 267
DESCRIPTION: S/2 NW/4 of Section 17, Township 16 North, Range 11 West,
Blaine County, Oklahoma

Seal: County clerk
Watonga - Blaine County, Okla

3519

State of Oklahoma] Fee 8.00
Blaine County] ss
Filed for Record on the
3 day of July A.D. 1984
at 10:10 o'clock AM. and
recorded in book 442 of MSC
at page 415
s\ Bluerig McBev (?) County Clerk
s\Lisa Wilkerocu (?) Deputy

APPENDIX DD

Exerpt 1. From the Court of Civil Appeals Opinion in case # 99704 :

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA DIVISION III

ROBERT OLSON, Plaintiff/ Appellant, vs CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., And DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants/ Appellees	Filed Court of Civil Appeals State of Oklahoma Feb 17 2004 Michael S. Richie Clerk # 99704

APPEAL FROM THE DISTRICT COURT OF BLAINE COUNTY, OKLAHOMA

HONORABLE RONALD G. FRANKLIN, TRIAL JUDGE

AFFIRMED

Exerpt from page 5, paragraph 8 :

8. Olson objected to the motions for summary judgment, but submitted no evidentiary materials whatsoever. The trial court granted summary judgment to Continental and Davis on Olson's claims, concluding :

> "[T]he old leases have quite probabl[y] expired under the terms of said leases for failure to produce. In addition thereto; it is undisputed or admitted that after the new leases were acquired and [Davis] had acquired a[n] interest in the old leases that a quiet title action was filed in Blaine County, that the Plaintiff was named a party defendant and that the plaintiff asked for no affirmative relief and as a result thereof, a settlement was reached in said case which resulted in the plaintiff being dismissed in that lawsuit and the old leases voluntarily released, thereby extinguishing any interest the plaintiff owned in the leases."

Exerpt 2 from :

CLERK'S CERTIFIED RECORD ON ACCELERATED APPEAL #99704 BOOK 1 of 4

From Table of Contents :

1. Petition to Quiet Title and to Recover Real Property and Money
2. Plaintiff's Motion to Deny Defendants' Combined Motion to Dismiss and Motion for Sanctions

Plaintiff's Motion to Deny Defendants, Combined Motion to Dismiss and Motion for Sanctions filed by Defendants Davis Operating Company and William H. Davis

3. Plaintiff's Motion for Sanctions
4. Judge's Order denying Defendants' Motions for Dismissal
5. Plaintiff's answer to Counterclaim of Davis Operating Company
6. Plaintiff's Response to Defendants', Davis Operating Company and William H. Davis, Motion for Summary Judgment and Plaintiff's Motion to Deny Defendants' Motions for Summary Judgment

B. Response Exhibits

BOOK 2 of 4:

7. Plaintiff's Response to Defendants', Continental Resources, Harold Hamm and Tom Luttrell, Motion for Summary Judgment and Brief in Support Thereof, and Plaintiff's Motion to Deny Defendants' Motion for Summary Judgment

C. Response Exhibits

8. Plaintiff's Reply to Defendants' Continental Resources, Inc., Harold Hamm and Ton Luttreee's Reply Brief in Support of Summary Judgment
9. Plaintiff's Submission of Finding of Facts and Legal Conclusions for the Judgment Order Concerning Summary Judgment

Exerpt 3 from:

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff/ Appellant, vs CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., And DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants/ Appellees	)	Filed Approximately March 17, 2004 Case No. # 99704

APPELLEES, CONTINENTAL RESOURCES, INC., HAROLD HAMM, AND TOM LUTTRELL'S ANSWER TO APPELLANT'S PETITION FOR WRIT OF CERTIORARI

Exerpt from page 4, paragraph 2 :

"The COCA properly followed the law applicable to summary judgments. In the first paragraph of the decision, the COCA states, 'We affirm because Olson submitted no evidentiary materials *establishing a material issue of fact.*' (Opinion, at Paragraph 1, emphasis added) Again in paragraph 10 of it's opinion, the COCA states, 'Olson's statement controverted their assertions, but was not accompanied by *supporting evidentiary materials.*' (Opinion, at Paragraph 10, emphasis added). These statements by the COCA are absolutely correct. Olson did submit some evidentiary materials in his responses to the Appellee's motions. Therefore, the COCA's statement that Olson submitted no evidentiary materials whatsoever is an overstatement. However, the few evidentiary materials that Olson attached to his responses did not establish a genuine dispute regarding any material facts."

Exerpt 4, from :

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

ROBERT OLSON, Plaintiff/ Appellant, vs CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc., TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., And DAVIS OPERATING COMPANY, an Oklahoma Corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants/ Appellees	)	Filed Approximately March 17, 2004 Case No. # 99704

ANSWER OF DAVIS OPERATING COMPANY AND WILLIAM H. DAVIS TO PETITIONER/ APPELLANT'S PETITION FOR CERTIORARI

Exerpt 5, from pages 5 and 6

"Petitioner argues that this Court should review the decision of the COCA for three (3)

reasons as summarized below :

1. The COCA mistakenly determined that petitioner submitted no evidentiary materials establishing a material issue of fact in the district court,

2. The mistake in # 1 biased all subsequent legal analysis of the COCA; and

3. The COCA did not test all evidentiary tendered in summary process at the district court for its legal sufficiency.

While Petitioner attached exhibits to his objection to Defendants'/Appellees' Motion for Summary Judgment, the exhibits do not constitute acceptable evidentiary material in support of his objection. (Record at Book 1, tab 6 and Book 2, tab 7). The exhibits include pleadings from Case No. CJ-99-123, between Continental Resources, Inc., and Davis Operating Company, as well as copies of the lease releases from all the working interest owners."

APPENDIX GG

IN THE DISTRICT COURT OF BLAINE COUNTY
STATE OF OKLAHOMA

ROBERT OLSON Plaintiff, vs. CONTINENTAL RESOURCES, INC., an Oklahoma corporation, HAROLD HAMM, an individual and President and Chief Executive Officer of Continental Resources, Inc.; TOM LUTTRELL, an individual and Vice-President of Continental Resources, Inc., and DAVIS OPERATING COMPANY, an Oklahoma corporation, WILLIAM H. DAVIS, an individual and President of Davis Operating Company, Defendants.	)	Case No. CJ-2002-151

AFFIDAVIT OF TOM LUTTRELL

STATE OF OKLAHOMA]
COUNTY OF GARFIELD] SS:

Tom Luttrell, of lawful age, being first duly sworn upon oath, deposes and states as follows:

1. My name is Tom Luttrell, and at all pertinent times hereto, I have been employed at Continental Resources, Inc. ("CRI") in the position of Vice-President-Land.

2. I have first hand knowledge of all the facts and circumstances stated in this Affidavit. (1)

3. In September 1993 CRI acquired an undivided interest of approximately 52% in certain oil and gas leases covering Section 17-16N-11 W.I.M., Blaine County, Oklahoma ("Section 17") (the "Old Leases") and an undivided 52% working interest (approximately) in the Matli #1-17 well in Section 17. As a consequence, CRI became the operator of the Matli #1-17 well.

4. The Old Leases had been acquired originally in 1981 and by September of 1993, when CRI acquired its interest in them, their primary terms had long since expired.

5. CRI performed two separate recompletions on the Matli #1-17 well, the first in February of 1997 and the second in July 1997. However, despite CRI's best efforts, by September of 1998, the Matli #1-17 well was no longer capable of

producing hydrocarbons in paying quantities and there were no other potentially productive formations penetrated by the Matli #1-17 bore hole that could be tested. Consequently, CRI set a bridge plug and removed the tubing from the Matli #1-17 well. After the bridge plug was set and the tubing removed, the Matli #1-17 well was not physically capable of producing any hydrocarbons.

6. In a good-faith effort to hold the leases in effect, CRI, in September of 1998, entered into a Farmout Agreement with Marshall Oil Corporation ("Marshall") that allowed Marshall the opportunity to drill a second well in Section 17. However, Marshall did not perform and in January of 1999, Marshall acknowledged to CRI that its failure to perform under the Farmout Agreement had probably resulted in the Old Leases expiring by their own terms. Marshall then offered to acquire new leases.

7. In February of 1999, CRI tentatively agreed with Marshall to allow Marshall to acquire new oil and gas leases and at the same time, sent letters out to all of the working interest owners, recommending that the Matli #1-17 well be plugged.

(2)

8. One of the working interest owners, Thomas Hill Puff ("Puff") refused to consent to the plugging

of the Matli #1-17 well and, therefore, CRI on May 1, 1999, assigned its interest in the Old Leases only insofar as they pertained to the Matli #1-17 well to Puff's designee, Hill Royalty Company. CRI retained its record ownership of 52% of the Old Leases, exclusive of the Matli #1-17 well bore.

9. Because of Puff's refusal to consent to the plugging of the Matli #1-17 well, CRI was forced to terminate its agreement with Marshall under which Marshall had offered to acquire new oil and gas leases.

10. In June of 1999, Hill Royalty Company assigned all of its interest in the Old Leases to the Defendant, Davis Operating Company ("DOC").

11. On August 12, 1999, CRI performed a surface inspection of Section 17 and discovered that no work had been done to restore production on the Matli #1-17 well and that no steps preliminary to the drilling of a new well had been taken.

12. On September 2, 1999, CRI advised DOC in writing that it was CRI's opinion that the Old Leases had expired by their own terms and that CRI would proceed to acquire new leases.

13 On September 3, 1999, CRI did acquire new

leases on Section 17.

14. On September 20, 1999, DOC moved a workover rig onto the Matli #1-17 well and commenced recompletion operations.

15. On October 26, 1999, CRI filed *Continental Resources, Inc. v. Davis Operating Conpany, et al.*, Case No. CJ-99-123, In the District Court of Blaine County, Oklahoma, in order to obtain an order determining the New Leases to be the only valid and existing oil and gas leases covering the property in question and that the Old Leases had terminated according to (3) their terms. In addition, CRI sought damages from DOC for its wrongful operation of the Matli #1-17 well.

16. At a court-ordered settlement conference in *Continental Resources, Inc. v. Davis Operating Company, et al.*, Case No. CJ-99-123 in the District Court of Blaine County, Oklahoma, held on July 27, 2000, CRI, Thomas Hill Puff, and DOC reached a good-faith settlement of all outstanding issues in that case. Pursuant to the terms of the settlement, DOC filed a release of the Old Leases.

17. I do not personally claim any right title or interest in the New Leases covering Section 17 and

all actions I have taken in connection with the matters described above have been in my role and function as an employee and officer of CRI.

Further, affiant sayeth not.

Dated this 12th day of May, 2003.

s\ Tom Luttrell
TOM LUTTRELL

Subscribed and sworn to before me this 12th day of May, 2003.

My Commission Expires:

2 - 27- -2006
02003543

s\ Marietta F. Bolz
NOTARY PUBLIC

Seal:
MARIETTA F. BOLZ
GARFIELD COUNTY
NOTARY PUBLIC
STATE OF OKLAHOMA

JCR/gs
mitchie/gad/continental/olson

(4)

APPENDIX HH

Record page 87, (page 4 of Exhibit E of the Affidavit of Tom Luttrell, May 12, 2003,{Exhibit D} attached to Defendants' Continental Resources, Harold Hamm and Tom Luttrell, Motion For Summary Judgment, filed June 2, 2003, in the Blaine County, Oklahoma District Court, starting on Page 30, Record on Appeal # 99704, and Record pg 1560.

Oil and Gas Production Review Comparison Sheet

CONTINENTAL RESOURCES, INC.
OIL AND GAS PRODUCTION REVIEW
COMPARISON OGP10PM302 MARCH 1998
GP10 - Print purchaser / Pumper Comparison
Selected year SUZI 11:56 - AM MAY 06, 2003
P10
[WE]LL/ZONE : 8014701 NAME: MATLI #1-17
SPUD DATE: 2/01/84 PUMPER: EARL HOLDER, RT 12,
LOCATION: SEC: 017/ 016N/ 011W COMPLETION DATE: 7/ 20/84 TAX # : 011-084472-00 API#:
AREA : ALL; FIRST PROD DATE: 7/20/84 PURCH INFO: ENTERED FROM RUN STATEMENTS
[OT]HER COMMENTS --: 920084, SOLD TO DAVIS OPERATING 5/1/99
[FIR]ST SALE TYPE PURCHASER'S NAME REFERENCE NUMBER

CONTRACT INFORMATION ----- GAS INFORMATION -----
[ ]/00/93 OIL SOLD 5/1/99
2 MULTI-GAS SALES: c NGPA NBR: 000-
[ ]/00/93 GAS SPOT 5 BALANCE DATE: 07/93
DATE FILED: 0/00/00
[0]/00/00 GAS CALCULATED VALUE
PRIORITY : 5
[ ]/00/00 GAS

[P]ROD -----PUMPER INFORMATION ------

DAYS	BEGIN OIL PROD	WATER	GAS	OIL RUNS
14	.00	36554	2698	.00
00	.00	23293	16	.00
23	.00	84990	8010	.00
07	.00	54998	1312	.00
31	.00	75692	8746	.00
30	.00	67498	7225	.00
31	.00	80730	8177	.00
31	.00	63929	6789	.00
22	.00	24083	2236	.00
00	.00			.00
00	.00			.00
89		511767	45209	
[ ]01	68	1491728		38

[--------PURCHASER'S INFORMATION ----------]

OIL BBLS	VALUE	GAS MCF	VALUE
.00	.00	2176	3531.13
.00	.00	26	41.18
.00	.00	8062	13444.54
.00	.00	1514	2892.05
.00	.00	9584	19009.22
.00	.00	7936	13899.64
.00	.00	8887	18581.28
.00	.00	7446	11869.41
.00	.00	2538	3349.50
.00	.00		.00
.00	.00		.00
		48169	86617
38	448	234630	367124

[VARIANCE]	REASON FOR SHUT IN			
OIL	GAS	BPD	$/BBLMCF/DA	$/MC
-522	SI 14, 23, 24TH			
	.00	.00	155	1.62
10	KOCH HAS LINE PROBLEMS			
	.00	.00		1.58
52	SET SEPARATOR, GAS LINE FROZ			
	.00	.00	351	1.67
202				
	.00	.00	216	1.91
838	CLEAN SCALE			
	.00	.00	309	1.98
711				
	.00	.00	265	1.75
710				
	.00	.00	287	2.09
657				
	.00	.00	240	1.59
302	SI: ENOGEX TIE-IN , SET BRIDGE			
	.00	.00	115	1.32
SI 10/26,	NO PRESSURE			
	.00	.00		.00
SI 10/26				
	.00	.00		.00
=====				
2960 = YEAR TO DATE TOTALS - BS&W				
	.00	.00	255	1.80
87345 == INCEPTION TOTALS - BS&W ==				
	.05	11.79	335	1.56

APPENDIX II

SETTLEMENT AGREEMENT

McKNIGHT & GASAWAY
A PROFESSIONAL CORPORATION
EST 1946
201 NORTH GRAND AVENUE
FOURTH FLOOR
P.O. BOX 1108
ENID, OKLAHOMA 73702 - 1108
TELEPHONE : 580 233 2020
FACSIMILE : 580 233 2089

ATTORNEYS AT LAW:
R.L. McKNIGHT
RALPH E. SEALS, JR.
MICHAEL C. BIGHEART
DAVID C. BUTLER

J.W. BECK, JR., UT COUNSEL

L.W. McKNIGHT, (1902 - 1979)
H.L. GASAWAY, RETIRED

AUGUST 10, 2000

Mr. Robert B. Sartin
Barrow, Gaddis, Griffith & Grimm
610 South Main, Suite 300
Tulsa, Oklahoma 74119 - 1248

RE: Continental Resources, Inc. v. Davis Operating Company, et al.; District Court of Blaine County, State of Oklahoma; Case No. CJ-99-123

Dear Robert:

this letter will set forth the terms of the settlement between my client, Continental Resources, Inc. ("CRI") and your clients Davis Operating Company ("Davis"), John P. Boswell, Rhoda Bernstein, N. Leonard Fox and Foxco Energy 1986, Ltd. EEC/PP No. 1 (collectively "Davis, et al."), pertaining to the captioned lawsuit. The terms of the agreement are as follows:

1. Davis will pay the outstanding indebtedness owed to Hamm & Phillips Service Company.

2. Davis, et al. will withdraw their claims that the oil and gas leases referred to in the Petition on file herein as the Old Leases remain in full force and effect, and will file releases of all their right, title and interest in the Old Leases.

3. CRI will assign to Davis all of CRI's right, title and interest in and to the oil and gas leases referred to in the Petition on file herein as the New Leases insofar and only insofar as the New Leases pertain to the Matli No. 1-17 wellbore. Davis will

then assign undivided interests to John P. Boswell, Rhoda Bernstein, N. Leonard Fox and Foxco Energy 1986, Ltd. - EEC/PP No. 1. (Davis, et al. will later agree on the interests they will each own in the New Leases as to the Matli No. 1-17 wellbore.)

4. CRI will assign to Davis an undivided 48.4075229% interest in the New Leases exclusive of the rights to the Matli No. 1-17 wellbore. Davis will then assign undivided interests to John P. Boswell, Rhoda Bernstein, N. Leonard Fox and Foxco Energy 1986, Ltd. - EEC/PP No. 1. (Davis et al. will later agree on the interests they will each own in the New Leases exclusive of the Matli No. 1-17 wellbore.)

5. Davis will reimburse CRI for 48.4075229% of the actual costs CRI incurred in the acquisition of these New Leases. (Davis' actual costs will include the lease bonuses and associated expenses and will be $24,849.43.)

6. If Davis participates, CRI agrees that all water produced from the well that CRI will drill in

the Southwest Quarter of the Northeast Quarter (SW/4 NE/4) of Section 17 - 16N- 11 W.I.M., Blaine County, Oklahoma, will disposed of into Davis disposal well located in Section 16 - 16N -11 W.I.M., Blaine County, Oklahoma, and an agreed upon expense of 17 1/2 ¢ per barrel, inclusive of the costs to lay the line necessary to transport the water to Davis' disposal well. (If Davis participates in this well and if is completed as a commercial well, Davis will immediately take steps to lay the line necessary to transport the water to Davis' disposal well well so that it will not be necessary to incur expenses related to the hauling of water by truck.)

7. Davis will remain the operator of the Matli No. 1-17 wellbore and CRI will be the operator of the new well that CRI will drill in the Southwest Quarter of the Northeast Quarter (SW/4 NE/4) of Section 17-16N-11 W.I.M., Blaine County, Oklahoma. (The Oklahoma Corporation Commission will have jurisdiction to decide who will be the operator of any additional wells that might later be drilled in Section 17-16N-11 W.I.M., Blaine County, Oklahoma.)

8. As to the new well that CRI will drill in the SW/4 NE/4 of Section 17-16N-11 W.I.M., Blaine County, Oklahoma, Davis, et al. will make their

election in accordance with the Order that will be in Oklahoma Corporation Commission Cause CD No. 990-007767. If Davis, et al. elects to participate, this pooling order will govern operations. Provided, however, Davis is not waiving its right ot appeal the Order that will be issued in Oklahoma Corporation Commission Cause CD No. 990 - 007767.

9. CRI agrees that it shall not produce, until after February 1, 2001, the interval in the new well it will drill in the Southwest Quarter of the Northeast Quarter (SW/4 NE/4) of Section 17-16N-11 W.I.M., Blaine County, Oklahoma, that is the stratigraphic equivalent to the interval at 9,130 feet to 9,235 feet as identified in the logs for the Pan Am - Matli Unit "B" No. 1 Well located in the center of the NW/4 of Section 17-16N-11W.I.M. and at 9180 feet to 9275 feet as identified in the logs for the Amoco - Narcross Unit No. 1 Well located in the center of the SE/4 of Section 17-16N-11 W.I.M.

10. CRI will not oppose Davis seeking a

separate allowable for the Matli No. 1-17 Well, if applicable.

11. CRI and Davis, et al. will each dismiss with prejudice the claims each has asserted against the other in the captioned lawsuit.

12. CRI and Davis, et al. will each be responsible for the costs each has incurred in this lawsuit, including their respective attorney fees.

13. CRI and Davis, et al. will prepare, execute and file all instruments required by this letter within ten (10) days from the date this Letter Agreement is agreed to and accepted by Robert B. Sartin as attorney for Davis, et al. Time is specifically agreed to be of the essence.

14. I represent that I have the authority to bind CRI to the terms of this Letter Agreement and you represent that you have the authority to bind Davis, et al. to the terms of this Letter Agreement.

15. CRI and Davis, et al. will keep the terms of this Letter Agreement confidential. In this regard, neither CRI nor Davis, et al. nor their respective attorneys nor any other person having access to this Letter Agreement shall disclose in any manner its terms unless with the prior written consent of the

other or unless ordered to do so pursuant to the terms of a valid court order. Concerning a valid court order, if CRI, Davis, et al. and/or their respective attorneys become aware of any legal proceeding pursuant to which CRI or Davis, et al. might be required to disclose any of the terms of this Letter Agreement, that party or that party's attorney shall promptly give written notice of any such legal proceeding to the other party.

16. This Letter Agreement is being executed in duplicate and each of the duplicates will constitute an original, but when taken together, will constitute but one Letter Agreement.

If this Letter Agreement correctly sets forth the terms of the settlement between CRI and Davis, et al., please indicate by executing both originals of the Letter Agreement and return one executed originals to me.

Sincerely,

s\ Ralph E. Seals, Jr.
Ralph E. Seals, Jr.

RES/sf

AGREED TO AND ACCEPTED this 18 day of August, 2000.

s\ Robert B. Sartin

ROBERT B. SARTIN, as attorney for
DAVIS OPERATING COMPANY,
JOHN P. BOSWELL,
RHODA BERNSTEIN,
N. LEONARD FOX
FOXCO ENERGY 1986, LTD. - EEC/PP NO. 1

cc: Continental Resources, Inc.
ATTN: Mr. Jim Canon
VIA TELEFAX ONLY (580) 548-5182

cri\davis\settlement\sartin,lt agmt

APPENDIX KK

Exerpt from *Fellows v. Owens,* 62 P.2d 1215; 178 Okla. 224; 1936 OK 722.:
Pages 1217 and 1218:

"..... in view of the fact that this trial * **1218** judge was having considerable difficulty in reaching a conclusion in the case, it appears that counsel for plaintiffs proffered and rendered to him certain assistance in preparing the finding of facts and conclusions of law. The evidence is conflicting regarding the extent of the assistance rendered by counsel to the judge. But the evidence is conclusive that counsel for the defendant was not advised and knew nothing of the activities of counsel for the plaintiffs in this particular."

"A motion to vacate a judgment filed during the term in which the judgment was rendered is addressed to the sound judicial discretion of the trial court, and its ruling thereon will not be disturbed unless an abuse of discretion appears. *Halliburton v. Illinois Life Ins. Co.,* 170 Okla. 360, 40 P.2d 1086,1087; *Harlow Pub. Co. v. Tallant,* 171 Okl. 579, 43 P.2d 106."

"A petition to vacate a judgment, under section 810, C.O.S. 1921 [section 556, O.S. 1931], is addressed to the sound legal discretion of the trial court, and the judgment will not be disturbed on appeal unless it clearly appears that the trial court has abused that discretion. Such discretion should always be exercised so as to promote the ends of justice, and a much stronger showing of abuse must be made where a judgment has been set aside than where it has been refused. *Vacuum Oil Co. v. Brett,* 150 Okl. 153, 300 P. 632,633; *Tippins v. Turben,* 162 Okl. 136, 19 P.2d 605."

"[4] The fact situation presented in this case is unusual and peculiar. The argument contained in the briefs relates in the main to the issue of fraud. It is noted, however, that although the trial court found that fraud had been committed there was an element of reluctance connected therewith in that the court found that "the condemnation, if any, is more to be placed upon bench than on the lawyers in this case, but still I don't think the defendant has had a chance to make his defense." There was a finding, however, that there was at least sufficient constructive fraud involved which constituted a "casualty or misfortune preventing the party from defending." As heretofore stated, the evidence is conflicting

regarding the motive which prompted counsel for plaintiff to proffer assistance to the judge in preparing his finding of fact and conclusions of law in the case and likewise as to the amount of assistance actually furnished. It is one of our fundamental concepts that every contested court proceeding should be an adversary proceeding; that neither litigant in the case should have the opportunity to present his contentions to the court except in the presence of his adversary. The trial judge, eminent jurist that he was, whose honor and integrity are not questioned by any party to this proceeding, was in his declining years and was weakened mentally and physically by the ravages of age and disease and was no doubt highly impressionable. For eight years he had toiled with the problems of law and facts involved in the case before him. When he indicated to plaintiff's counsel the difficulty he had encountered in working out his findings and conclusions in the case, he was offered and received assistance to that end from said counsel without the knowledge of counsel for defendant. The trial court found that defendant was thereby prevented from properly defending himself. We cannot say that in vacating said judgment the court thereby abused its discretion. From a careful examination of the record, we conclude that there is abundant evidence sustaining the finding of fraud practiced on behalf

of the successful party and unavoidable casualty and misfortune preventing defendant from presenting his defense."

APPENDIX LL

Supreme Court of Oklahoma
Ethel SADBERRY, Co-Administrator of the Estate of Ada Belle Durnell, Deceased;
H. B. Wilcher; Myrtle Watkins; Oren Wilcher; Cecil Wilcher; Bertha Rains;
Lottie Hall, Guardian of Ruby Wilcher, an incompetent; and Nellie M. Harmon,
Plaintiffs,
v.
Garland H. HOPE, Assigned County Judge of McClain County, Oklahoma,
Defendant.
No. 43044

July 23, 1968.

Plaintiff sought writ of prohibition to restrain trial judge from proceeding with hearing to vacate judgment which surcharged guardian and a writ of mandamus directing the judge to proceed with other matters pending. The Supreme Court, Hodges, J., held that guardian's petition to vacate final judgment failed to set forth sufficient elements of fraud where the allegations concerning matters of which guardian had knowledge during trial, had no relationship to judgment rendered, and which could have been litigated at trial and which failed to show

how acts of successful litigants or their counsel prevented her from presenting fully and fairly her side of the case.

Writ of prohibition granted; writ of mandamus denied.

See also Okl., 441 P.2d 381.

West Headnotes

[1] **Judgment Key 303**
228k303 Most Cited Cases

[1] Judgment Key 375
228k375 Most Cited Cases
Judgment which, on appeal, has been affirmed and has become final, may upon substantial compliance with statutory requirements be vacated or modified for fraud, practiced by the successful party in obtaining the judgment. 12 O.S. 1961, Sec. 1031, Subd. 4.

[2] **Judgment key 384**
228k384 Most Cited Cases
Failure to verify by affidavit a petition to vacate a judgment after term and to issue and serve summons is fatal. 12 O.S. 1961, Section 1033.

[3] **Judgment Key 384**
228k384 Most Cited Cases

[3] **Judgment Key 388**
228k388 Most Cited Cases

[3] **Prohibition Key 10(2)**
314k10(2) Most Cited Cases
County court was without jurisdiction to hear guardian's petition to vacate final judgment on ground of fraud where the petition had not been verified by affidavit and summons had not been issued or served on successful litigants, and prohibition was proper remedy. 12 O.S.1961, Sections 1031, subd. 4, 1033.

[4] **Judgment Key 375**
228k375 Most Cited Cases
Ordinarily, before final judgment after term will be set aside, the fraud must be extrinsic and collateral to issues tried and must be such that party was prevented from fairly exhibiting his case in court, or that fraud was practiced on the court, or its process, and not fraud in the cause of action.

[5] **Judgment Key 384**
228k384 Most Cited Cases
Guardian's petition to vacate final judgment which surcharged her failed to set forth sufficient elements

of fraud where allegations that successful litigant and her counsel relied upon confusion, poor bookkeeping and trickery in deluding trial court into belief that shortage existed in final account, and concerned matters of which she had knowledge during trial, had no relationship to judgment, could have been litigated at trial, and failed to show how acts of plaintiffs or counsel prevented her from presenting fully and fairly her side of the case. 12 O.S.1961, Sections 1031, Subd 4, 1033.

[6] **Judgment Key 384**
228k384 Most Cited Cases
Allegations that judgment was obtained on facts known to be false by plaintiffs and supported by testimony also known to be false, alone are not sufficient to vacate judgment after term. 12 O.S.1961, Sections 1031, subd 4, 1033.
***175** Syllabus by the Court

1. In an action under 12 O.S. Section 1031(4) a judgment, which after appeal to this court has been affirmed and has become final, may upon substantial compliance with the statutes be vacated or modified for fraud, practiced by the successful party, in obtaining the judgment.

***176** 2. Under 12 O.S. Sec 1033 a failure to verify by affidavit a petition to vacate a judgment and to issue

and serve summons is not substantial compliance with the statute.

3. Ordinarily, before this court will set aside a final judgment after term, the fraud must be extrinsic and collateral to the issues tried and must be such that a party was prevented from fairly exhibiting his case in court, or that fraud was practiced on the court, or its process, and not fraud in the cause of action.

4. Allegations that a judgment was obtained on allegations of fact known to be false and supported by testimony also known to be false, alone, are not sufficient to vacate a final judgment after term.

Action for Writ of Prohibition to restrain defendant from proceeding with a hearing on an Application to Set Aside Judgment, and for Writ of Mandamus directing the defendant to proceed with other matters pending. Writ of prohibition granted, writ of mandamus denied.

Richard James, Stroud, Henry Montgomery, Purcell, for Plaintiffs in error.

Thomas G. Smith, Purman Wilson, Purcell, for Defendants in error.

HODGES, Justice.

This is an original action wherein the plaintiffs seek a Writ of Prohibition directed to the defendant judge to desist and refrain from proceeding with a hearing on an 'Application to Set Aside the Judgment of the District Court in Connection With Guardianship and Succeeding Orders and to Reopen.' Upon examination of the pleadings and issues, we have elected to assume jurisdiction.

On February 23, 1954, Mae Harrison was appointed the guardian of the person and estate of Ada Belle Durnell, an incompetent person, who died in November, 1961. In june 1963, the county court approved the Final Account and Supplemental Final Account of the guardian. An appeal was taken to the district court where the guardian was surcharged in the amount of $24,816.06. On appeal to this court, the judgment was affirmed and mandate issued. In re Guardianship of Durnell, Okl., 434 P.2d 905.

After the mandate was spread of record, the guardian filed in the county court, an application to set aside the above judgment, and prayed that she be allowed to reopen to explain the items of surcharges. The application listed sixteen acts which the guardian alleges caused the judgment to be procured through mistake, trick and deception.

The plaintiffs requested the defendant judge to strike the application. The request was denied and a date was set by the court to hear evidence in support of the application. It is from this order the plaintiffs seek relief.

The plaintiffs contend that the application to set aside the reopen is directed to a judgment which has become final, and for that reason the defendant judge has no jurisdiction to entertain the application.

The guardian denies that the defendant judge is assuming judicial power not granted by law. She argues that under 12 O.S. Section 1031(4) an application to vacate a probate order may be considered upon the specific allegation of extrinsic fraud.

The case presents two issues for our determination: (1) the jurisdiction of the county court to hear evidence in support of the application to set aside a judgment which on appeal to this court was affirmed and has become final; 2) the sufficiency of the allegations of fraud.

[1][2] We agree that under the provisions of 12 O.S. Section 1031(4) a judgment which, on appeal, has been affirmed and has become final, may upon

substantial compliance with the statutes be vacated or modified for fraud, practiced by the successful party, in obtaining the judgment. The petition to vacate or modify, however, is subject to the conditions set forth in 12 O.S. Section 1033. Under this section the proceedings to vacate or modify a judgment *177 after term, 'shall be by petition, verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant,' and the action shall be commenced after the issuance and service of summons. *Cherry v. Gamble,* 101 Okl. 234, 224 P. 960.

In *W. T. Rawleigh Medical Co. v. Eggers,* 74 Okl. 190, 178 P. 108, we held:

> 'The county court is without jurisdiction, at a subsequent term, to take any steps toward vacating or modifying a judgment or order of the court, rendered at a preceeding term, unless the provisions of sections 5267 -- 5269, Rev. Laws 1910 (12 O.S. 1031 -- 1033), relating to the vacation and modification of judgments and orders, have been substantially complied with. An order made by the court at a subsequent term, vacating a judgment rendered at a former term, without complying with the conditions of the statute in regard thereto, is void.'

See also, *Arnold v. Arnold,* 207 Okl. 352, 249 P.2d 734.

[3] In the present case the guardian has not substantially complied with the provisions of 12 O.S. Section 1033. The application to set aside (petition to vacate) is not verified by affidavit and no summons was issued or served on the plaintiffs.

We also find the application fails to set forth sufficient elements of fraud. In *Metzger v. Turner,* 195 Okl. 406, 158 P.2d 701, this court held in paragraph 3 of the syllabus as follows:

> 'Where a suit is brought under the statute to vacate a default judgment on the ground of fraud, the petition to vacate, in order to state sufficient cause, must allege fraud in obtaining the judgment extrinsic and collateral to the issues tried in the case where the judgment attacked was rendered and it must be such fraud of the prevailing party as to prevent the other party having a fair trial. Allegations that the judgment was obtained on allegations of fact known to be false and supported by testimony also known to be false, alone, are not sufficient.'

In *Britton v. Gannon,* Okl., 285 P.2d 407,

55 A.L.R.2d 667, extrinsic fraud was defined as follows:

> 'Extrinsic fraud is any fraudulent conduct of successful party which was practiced outside of actual adversary trial directly and affirmatively on defeated party whereby he was prevented from presenting fully and fairly his side of cause, including false representations that defeated party is merely nominal party against whom no relief is sought, false promises of compromise, concealment of suit, kidnapping of witnesses, and the like, and in such cases court of equity has power to annul decree so obtained.'

[4] The general rule is that before this court will set aside a final judgment after term, the fraud must be extrinsic and collateral to the issues tried and must be such that a party was prevented from fairly exhibiting his case in court, or that fraud was practiced on the court, or its process, and not fraud in the cause of action. *Stutsman v. Williams,* 87 Okl. 64, 209 P. 406; *Davidson v. Mutual Savings and Loan Ass'n,* 181 Okl. 295, 73 P.2d 455.

[5] The guardian's averments of fraud do not meet the conditions necessary to vacate the judgment. She alleged acts of trickery and deception by plaintiff Sadberry or her counsel in taking advantage of the aged condition of the guardian;

her lack of business experience; that counsel took advantage of discrepancies in the original inventory to show a shortage of bonds, when counsel knew that the bonds were included in the Final Account; that counsel listed unreported income when counsel knew that these deposits were made in a lump sum under oil income; that counsel procured an order disallowing claims with full knowledge that they were proper expenditures; that counsel failed to list a $1000.00 loan to plaintiff Sadberry, but instead urged the statute of limitations; that counsel for Plaintiff Sadberry *178 obtained a spurious order allowing final account; and that counsel relied upon confusion, poor bookkeeping and trickery into deceiving the trial court that a shortage existed in the guardian's final account.

The allegations of fraud are directed to matters which guardian had knowledge during the trial of the case or had no relationship to the judgment rendered. All of the allegations, which the guardian now complains, were presented and tried in the trial court, or were matters which, if the guardian had choose, could have litigated.

basically, it appears that the principle reason the guardian seeks a vacation of the judgment is that the plaintiff Sadberry or her counsel had personal knowledge that the guardian had made a proper

accounting of her guardianship, but deluded the trial court into the belief that there was an actual shortage when, in truth nad in fact, they had knowledge there was none, abd if given another opportunity she can now properly account and explain the items upon which she has been surcharged.

[6] As noted in the Metzger case, supra, allegations that the judgment was obtained on facts known to be false by the plaintiffs and supported by testimony also known to be false, alone are not sufficient to vacate a judgment after term.

When this surcharge judgment was presented to us on appeal, we stated that the guardian knew the challenged items in the accounts and knew that she would be required to produce vouchers to support her accounts and had ample time to prepare her case, and have her evidence ready for submission. On rehearing, after re-examination of the record and briefs, we concluded, 'the record is not inconclusive in establishing whether the guardian had failed to properly account; the record is conclusive that she did not properly account. * * *' The guardian has failed to show how the allegations of her application to vacate would have changed this conclusion. Assuming the validity of the guardian's allegations, she still has failed to show how the acts and conduct

of the plaintiffs or counsel prevented her from presenting fully and fairly her side of the case. It was the guardian, not the plaintiffs or counsel, who prepared the inventory in the guardianship, and prepared the final account. She was the person who had charge of all the books and records pertaining to the guardianship. She was given ample opportunity to present evidence showing a proper accounting of her guardianship. The fact that the final account was challenged and contested by the plaintiffs does not presuppose an element of fraud in the procurement of the judgment, which would be sufficient to vacate the judgment.

We find that a writ of prohibition should be granted prohibiting the defendant judge from proceeding with the hearing on the Application to Set Aside the Judgment of the District Court in Connection with Guardianship and Succeeding Orders and to Reopen.

The plaintiffs also seek in this action a writ of mandamus directing the defendant judge to proceed and rule on the application to surcharge the bonding company for the guardian in Case No. 2106, and further directing that he proceed with the hearing on the final accounts of both co-administrators, the objections to said final accounts, the determination of heirs, and for the distribution. The court having confidence that the matters now pending below will

be properly and judiciously administered by the defendant judge, we find it unnecessary to issue a writ of mandamus.

Writ of prohibition granted, writ of mandamus denied.

JACKSON, C.J., IRWIN, V.C.J., and DAVISON, BLACKBIRD, BERRY, and LAVENDER, JJ., CONCUR.

444 p.2d 175, 1968 OK 107

END OF DOCUMENT

APPENDIX MM

316 S.W.2d 915 (Cite as: 316 S.W.2d 915)
Court of Civil Appeals of Texas, San Antonio.

J. W. CAIN, et al., Appellants,
v.
Ethel Schallert NEUMANN et al., Appellees
No. 13325
June 11, 1958.
On Rehearing July 30, 1958.
On Second Motion for Rehearing Sept. 10, 1958

Exerpt:

Production in paying quantities on the 3,100-acre tract was the event which *919 the lease states will continue it in force. Commencing in 1934, a ton of salt was produced every five minutes of the day. At the time of trial, more than three and a half million pounds, or sixty railroad carloads per day were being produced. Columbia Southern, in 1933, agreed with the Schallerts to pay $300 per month as royalty and Schallerts agreed that such payments could be made in lieu of actual production. Those royalty payments never ceased. At the very moment, on Ostober 31, 1953, that Schallerts and Columbia Southern say that the fee reverted, brine was flowing unabated through the pipeline in precisely the same manner as it had for eighteen years, except that the amount of production had increased. At the time of trial

it had not stopped. The event which would determine the fee to the lands covered by the 1918 lease was the cessation of production 'in paying quantities thereon.' Production 'in paying quantities thereon' has not ceased. In Cole v. Philadelphia Company, 345 Pa. 315, 26 A.2d 920, 923, the Court held that a surrender of an old lease in exchange for a new lease when there was production under the terms of the old lease, did not destroy the rights of others claiming under the old lease. 'Would anyone contend that a lessee could be heard to say, even in writing, that he surrendered a lease while he at the same time held the premises and continued to operate? It is but an example of the ancient phrase that actions often speak so loudly that the words of the actor cannot be heard. The conduct of this lessee was absolutely inconsistent with either an actual surrender or an abandonment.' In other words, even if there were an express surrender clause, non-production must be the fact, not a mere recital.

Stripped of these distracting arguments, we find that the 1918 base lease declares that continued production of a mineral, without regard to who owns the mineral, on the 3,100-acre tract maintains the base lease in force. Salt, an admitted mineral, has been continuously produced on the 3,100-acre tract. The base lease is therefore continued in force.

Appellants, before the 1953 lease, owned property rights under the clear terms of the 1918 lease. They did not surrender that ownership, and so long as production continued, nobody else could.

APPENDIX NN

PHILLIPS PETROLEUM CO.

v.

TAYLOR et al.

Circuit Court of Appeals, Fifth Circuit # 9421

Jan. 14, 1941.

Cite as: 116 F.2d 994, U.S. Supreme Court, 313 U.S. 565

Exerpts from pages 995 and 996

Page 995

[1][2][3][4] It is well settled that, under the lease in the case, the assignee impliedly covenanted to protect the lessor from drainage. [FN3] To determine whether or not the assignor also has the protection of an implied covenant, the same rules govern as are applied to covenants in contracts between the lessor and lessee; [FN4] and the obligations between the assignor and assignee are what the contract of assignment makes them, in the light of the provisions of the lease assigned. [FN5] These rules are to be applied to the facts of this case and to be considered in the light of the law of Texas, that an overriding royalty, created by assignment, is an interest in real estate regarded as a covenant running with the land as between the assignor and assignee, and enforceable by the assignor against the assignee. Emerson v. Little Six Oil Co., 5 Cir., 3 F.2d 265; Colquitt v. Eureka Producing Co., Tex.

Comm.App., 63 S.W.2d 1018, 67 S.W.2d 224; Holiday v. Erwin, Tex. Civ. App., 85 S.W.2d 355.

Page 995 and Page 996

[6][7][8][9] The law requires an assignee who stands in the shoes of his lessee-assignor, to do that which an ordinary prudent operator would do under the circumstances, having due regard for the interests of all parties. [FN7] When a mineral lease is purchased, the lessee or his assignee must do one or more of three things: He must drill, pay rent, or forfeit *996 the lease. If he drills and finds oil, he neither rents nor forfeits, but he pays the royalty, and he must develop the property diligently; if he does not drill, but retains the lease, he must pay rental; if he neither drills nor pays rent, he must forfeit his lease. For the protection of the lessor, the law imposes upon the assignee the duty, when he drills, to exercise reasonable prudence solely in order to prevent loss to the lessor of that which is rightfully his, be the loss by drainage or refusal to capture or surrender the lease. This duty, where not expressed, is imposed by implied covenant. Applying the same principle to the assignor and assignee in this case, it seems entirely reasonable to impose a similar duty.

Page 996

The conclusion reached by us can prejudice no one,

since the implied covenant in favor of the lessor already has placed the onus of drilling or compensating for the failure to do so, and this obligation is not increased by our holding. Under any other holding, the assignor, his consideration consisting of royalty alone, might be seriously prejudiced by deprivation of his only enforcement privilege.

The petition for rehearing is denied.

APPENDIX OO

A PORTION OF DEFENDANTS' COUNSEL'S REQUEST FOR ATTORNEY FEES
(Record pg 1591)

6308.0008 07/11/03 JR 15 A 3 175.00
0.20 35.00
Phone call from Glenn regarding filing of reply brief ARCH
Continental Resources, Inc.
Robert Olson

6308.0008 07/11/03 JR 15 A 3 175.00
0.20 35.00
Organizing research on summary judgment ARCH
Continental Resources, Inc.
Robert Olson

6308.0008 07/11/03 JR 15 A 3 175.00
0.20 35.00
Phone call from Crystal regarding Don's schedule and phone call to Crystal regarding Doris cell number
Continental Resources, Inc. ARCH
Robert Olson

6308.0008 07/11/03 JR 15 A 3 175.00
0.10 17.50
Phone call to Don - left message

regarding trying to file brief today
ARCH
Continental Resources, Inc.
Robert Olson

6308.0008 07/11/03 JR 15 A 3 175.00
0.20 35.00
Phone call to Don regarding reply brief ARCH
Continental Resources, Inc.
Robert Olson

6308.0008 07/11/03 JR 15 A 3 175.00
2.50 437.50
Preparing notebook for judge of all authorities cited in briefs and highlighted ARCH
Continental Resources, Inc.
Robert Olson

6308.0008 07/13/03 GD 15 A 3 175.00
1.75 306.25
Begin preparation for hearing
ARCH
Continental Resources, Inc.
Robert Olson

6308.0008 07/13/03 JR 15 A 3 175.00
0.50 87.50
Preparation with Glenn for hearing on Thursday ARCH

Continental Resources, Inc.
Robert Olson

Client	Date	Atty	Cat	Src	HTBR PXCC	Tcd	Rate
			Hours		Amount		Ref#
6308.0008	07/16/03		GD	15	A	3	175.00
			3.50		612.50		ARCH

Telephone conference with attorney for Range Resources regarding stipulation. Telephone conference with P. Brolick. Prepare for hearing on motion for Summary Judgment.

Continental Resources, Inc.
Robert Olson

6308.0008	07/17/03		GD	15	A	3	175.00
			6.00		1050.00		ARCH

Attend hearing on motion for Summary Judgment in Watonga. Telephone conference with D. Fischbach regarding same. Telephone conference with attorney for Davis. Work on findings.

Continental Resources, Inc.
Robert Olson

6308.0008	07/17/03		JR	15	A	3	175.00
			0.20		35.00		ARCH

Phone call from Glenn regarding summary judgment granted
Continental Resources, Inc.
Robert Olson

6308.0008 07/17/03 JR 15 A 3 175.00
0.30 52.50 ARCH
E-mail to Glenn regarding bullet points to cover in findings of fact and conclusions of law
Continental Resources, Inc.
Robert Olson

6308.0008 07/22/03 GD 15 A 3 175.00
2.50 437.50 ARCH
Work on proposed Findings of Fact and Conclusions of law. Draft same.
Continental Resources, Inc.
Robert Olson

APPENDIX PQ

SELECTED EXERPTED QUOTES FROM:

OKLAHOMA
CIVIL PROCEDURE
FORMS
AND
PRACTICE
SECOND EDITION
Volumn 2

Authored by :

Clyde A. Muchmore
Harvey D. Ellis, Jr.

LexisNexis

Section 1005 SUMMARY JUDGMENT

In state practice in Oklahoma, summary judgment procedure is governed by Dist. Ct. Rule 13, the purpose of which "is to releive the courts of useless trials on issues that cannot be supported factually." Fraser, *Summary Judgment Where Facts Are Not Controverted*, 51 O.B.J. 1611 (1980).

Importance of Considering Appellate Procedure When Filing Motion

A motion for summary judgment is governed by strict procedures relating to appellate review, prescribed by Sup. Ct. R. 1.36, and referred to in Dist. Ct. Rule 13(h). These appellate procedures

must be considered *before* filing a motion for summary judgment, because in the event of an appeal, the parties are limited to presenting to the appellate court *only* those materials (usually including *briefs*) which were presented to the trial court. On a motion for summary judgment , therefore, the parties are making their presentation to *both* courts in the event of an appeal.

Relationship Between Federal and State Law.

Although other Oklahoma laws modeled after the Federal Rules of Civil Procedure have been codified, summary judgment procedures remain nonstatutory, as they were prior to the adoption of the Oklahoma Pleading Code. Dist. Ct. Rule 13 sets forth the Oklahoma procedures for summary judgment, and Dist. Ct. Rule 4, relating to motions generally, is also applicable.

Supporting and Opposing Papers

The party opposing summary judgment must file a response within 15 days after service of the motion, except that no response is due earlier than 45 days after that party has first either served or been served with a summons. Dist. Ct. Rule 13(b).

Standards for Ruling

Malson v. Palmer Broadcasting Group, 1997 OK 42, pgrf 11, 936 P.2d 940, 942. "It is not the

purpose of summary judgment to substitute trial by affidavit for a trial according to law."

Judicial Trend on Review

Summary judgments are similar to judgments on the pleadings, which are not favored by the courts. Smith v. Farmers Cooperative Ass'n, 1992 OK 11, prgf 8, 825 P.2d 1323, 1326.

The impact of the trend toward more favorable treatment of motions for summary judgment has arguably also been felt in the Oklahoma state court system, even if the Oklahoma Supreme Court does not subscribe to all the tenets of the U.S. Supreme Court's trilogy. Nevertheless, in the past, summary judgments have not fared well on appeal, with more than half reversed. The accelerated appellate procedure described above is designed to improve the likelihood of affirmance, by requiring parties opposing summary judgments to make all their arguments clearly known to the trial court.

SOME OIL AND GAS LEASE TERMS IN THE JULIUS LEE MATLI AND DORIS R. MATLI LEASE BOOK 362 PAGE 273, Blaine County County Clerk, signed January 12, 1981, RECORD: 5th page of Exhibit B of :

MOTION FOR SUMMARY JUDGMENT ANDBRIEF IN SUPPORT OF THE DEFENDANTS, CONTINENTAL RESOURCES, INC., HAROLD HAMM AND TOM LUTTRELL

Record page 59 and 808: About shut in royalty

2nd. .... During any period (whether before or after expiration of the primary term hereof) when gas is not being so sold or used and the well or wells are shut in and there is no current production of oil or operations on said leased premises sufficient to keep this lease in force, lessee shall pay or tender a royalty of One Dollar ($1.00) per year per net royalty acre retained hereunder. Such payment or tender to be made, on or before the anniversary date of this lease next ensuing after the expiration of ninty (90) days from the date such well is shut in and thereafter on the anniversary date of this lease during the period such well is shut in, to the royalty owner's credit in the rental depository bank hereinafter designated. When such payment of tender is made it will be considered that gas is

being produced within the meaning of the entire lease. Lessor shall have the privilege at his risk and expense of using gas from any well, producing gas only, on the leased premises for stoves and inside lights in the principal dwelling thereon out of any surplus gas not needed for operations hereunder.

Should the first well drilled on the above described land, or on acreage pooled therewith, be a dry hole, then, and in that event, if a second well is not commenced on said land, or on acreage pooled therein, within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payments of rentals. In the same amounts and in the same manner as hereinbefore provided. and it is agreed that upon the resumption of the payments of rentals as above provided, that the provisions, hereof governing the payment of rentals and the effect thereof, shall continue in force just as though there had been no interruption in the rental payments. If the lessee shall commence to drill a well or commence reworking operations on an existing well within the terms of this lease or any extension thereof, or on acreage pooled therewith, the lessee shall have the right to drill such well to completion or complete reworking operations with reasonable diligence and dispatch, and if oil or gas, or either of

them, be found in paying quantities, this lease shall continue and be in force with like effect as if such well had been completed within the term of years first mentioned.

COVENANTS OF LEASE, UNDER ASSIGNMENT

If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors or assigns. However, no change of division in ownership of the lands, rentals or royalties shall enlarge the obligations or diminish the rights of lessee. No change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof, and it is hereby agreed in the event this lease shall be assigned as to a part or parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default in the payment of the proportionate part of the rentals due from him or them, such default shall not operate to defeat or effect this lease in so far as it covers a part or parts of the lands on which the said lessee or any assignee thereof shall make due payment of said rentals. In

case lessee assigns this lease, in whole or in part, lessee shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment.

THE SURRENDER CLAUSE:

Lessee may at any time and from time to time surrender this lease as to any part or parts of the leased premises by delivering or mailing a release thereof to lessor, or by placing a release of record in the proper County. After a partial surrender, the rentals specified above shall be proportionately reduced on an acreage basis.